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This report contains digests of 1967 court decisions dealing with legal and constitutional issues of importance to teachers. All levels of the State and Federal judiciary systems are represented by the decisions. The 82 case digests are arranged under the following topic headings: (1) Eligibility and certification, (2) salaries, (3) contracts, (4) tenure, (5) school desegregation, (6) Teacher-school board negotiation, (7) loyalty, (8) liability for pupil injury, (9) retirement, and (10) miscellaneous. The distribution of cases reported under these categories is relatively even with the exception of teacher tenure issues which account for 28 (34%) of the 82 decisions. A title index to the cases is also provided. Court litigation affecting pupils in 1967 and State school legislation in 1968 are the topics of related documents EA 002 376 and EA 002 377. (JH)

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School Law Series

RESEARCH REPORT 1968-R9

The Teacher's Day in Court: Review of 1967

An Annual Compilation

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

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FOREWORD

The role of the courts in settling controversies and in the process shaping the course of many facets of the educational enterprise is clearly reflected in the judicial decisions handed down in 1967. For this reason, those engaged in education or promoting the cause of education will be interested in the contents of this report. Covered here are opinions touching on legal and constitutional issues of importance to teachers, including matters relating to employment security, academic freedom, faculty desegregation, and teacher/school board relations in the area of professional negotiation.

This annual compilation is the 29th in a series released by the NEA Research Division since 1939. This latest issue contains digests of published decisions of state and federal courts in cases in which teachers and other certificated school personnel were litigants.

This report was prepared by Frieda S. Shapiro, Assistant Director, with the assistance of Julian L. Ridlen, formerly with the Research Division as a research assistant.

GLEN ROBINSON
Director, Research Division

INTRODUCTION

This report contains digests of 82 court decisions with legal issues of particular interest to teachers. The material in this compilation comes from judicial decisions published during the 1967 calendar year in the National Reporter System. While most of the decisions summarized here were rendered in 1967, cases decided earlier, but not in print until sometime in 1967, are also included. With some exceptions, litigants in these cases, whether plaintiffs or defendants, were teachers or other professional school personnel in the public elementary and secondary schools and publicly financed institutions of higher learning. Also covered are cases in which teachers in nonpublic employment tested rights on questions of concern to all teachers.

The 82 decisions originated in 27 states and the District of Columbia. A total of 73 decisions are products of state courts, with 36 from the highest tribunal of the state where the action was initiated, 29 from intermediate appellate courts and eight from trial courts whose decisions are systematically published in the reference source used in the preparation of this report. The federal courts are represented by nine decisions. In addition to summary actions, the Supreme Court of the United States heard arguments and delivered opinions in two cases during 1967. One decision was rendered by a federal circuit court of appeals, five decisions came from federal district courts, and one case was decided by the United States Court of Claims in a salary action brought by overseas teachers.

Six states account for over half of the decisions appearing in this compilation, with New York state again in the lead, this time with 18 decisions. Other states with numerous cases were California and Illinois, each with seven, and Colorado, New Jersey, and New Mexico, with four cases apiece.

The case digests are arranged under the following 10 topic headings: (a) eligibility and certification, (b) salaries, (c) contracts, (d) tenure, (e) school desegregation, (f) teacher/school board negotiation, (g) loyalty, (h) liability for pupil injury, (i) retirement, and (j) miscellaneous. When there is more than one case from a state under the same topic, the cases are listed alphabetically by title. Table 1 classifies the 82 decisions by state and major issue raised. Cases with more than one issue are cross-referenced.

As in previous years, issues relating to teacher tenure were again the most numerous with 28 cases appearing in this category in 1967. Contract actions once more ranked second with nine decisions. Other than the two cases concerned with school desegregation which are included in this report, the remaining decisions were about evenly divided under the seven other topic headings. The six cases in the miscellaneous group include an action for damages and injunctive relief under the federal civil rights laws by a dismissed college teacher, a constitutional challenge to the Arkansas statute pertaining to the teaching of evolution, a teacher transfer matter, and the validity of a city charter provision which denied a teacher his elected seat on a city council.

The summary that follows selectively describes some of the major issues and significant cases presented in this report.

School desegregation--An important issue raised in the courts in past years and with increasing frequency in 1967 was the assignment of teaching staffs to schools on a racially segregated basis. This question appears with regularity in school desegregation suits brought by or in behalf of Negro pupils. Since teachers themselves were not litigants in these cases, the summaries of the decisions are not given in this report, but they may be found in The Pupil's Day in Court: Review of 1967, a companion school law publication of the NEA Research Division.

Included here, however, are two cases involving school desegregation in which teachers were directly concerned as parties. In one of these cases, Wall v. Stanly Board of Education, the U.S. Circuit Court of Appeals for the Fourth Circuit reversed a lower federal court decision denying a Negro teacher from North Carolina reinstatement to her position and recovery of damages for wrongful nonrenewal of her employment contract. The board denied the teacher re-employment after a shift in enrollment of pupils following the adoption of a freedom of choice school desegregation plan decreased the allotment of teacher spaces, despite its earlier approval of her re-employment as recommended by her principal. The appellate court held that the teacher was entitled to redress because she was not allowed to compete for a teaching position in the school system on the basis of her

TABLE 1.--MAJOR ISSUES IN CASES INVOLVING TEACHERS IN 1967

State	Certification and eligibility	Salaries	Contracts a/	Tenure b/	School desegregation	Teacher/school board negotiation	Loyalty	Liability for pupil injury	Retirement	Miscellaneous	Total cases
1	2	3	4	5	6	7	8	9	10	11	12
Alabama	...	...	...	1	...	...	...	...	...	...	1
Alaska	...	...	...	1	...	...	...	...	...	...	1
Arizona	...	...	...	1	...	...	...	...	...	...	1
Arkansas	...	...	1	...	...	...	...	...	...	2c/	3
California ...	1	...	...	3	...	1	...	...	1	1d/	7
Colorado	...	...	3	...	...	...	1	...	...	...	4
District	...	1	...	...	...	...	...	...	...	...	1
Georgia	...	...	1	...	...	...	...	...	1	...	2
Illinois	...	1	...	4	...	1	...	1	...	...	7
Kansas	...	...	...	...	1	...	...	...	...	...	1
Kentucky	...	...	...	3	...	...	...	...	...	...	3
Louisiana	...	...	...	2	...	...	...	1	...	...	3
Maryland	...	...	...	...	...	...	1	...	...	...	1
Massachusetts	...	...	1	...	...	...	1	...	...	...	2
Michigan	...	...	...	...	...	1	...	...	...	...	1
Minnesota	...	...	...	1	...	1	...	...	...	...	2
Mississippi ..	...	1	...	...	...	...	...	...	...	1e/	2
Missouri	...	...	1	...	...	...	...	...	...	...	1
New Jersey ...	...	...	...	1	...	1	...	1	1	...	4
New Mexico ...	...	...	...	3	...	...	...	1	...	...	4
New York	5	2	...	6	...	...	2	...	2	1f/	18
North Carolina	...	...	...	...	1	...	...	...	1	...	2
North Dakota .	...	...	2	...	...	...	...	...	...	...	2
Ohio	...	1	...	1	...	...	...	...	...	1g/	3
Oregon	...	...	...	1	...	...	1	...	...	...	2
Pennsylvania .	...	...	...	...	...	...	...	1	...	...	1
Texas	...	...	...	...	...	...	1	...	...	...	1
Wisconsin	...	...	...	...	...	1	...	1	...	...	2
Total number of cases	6	6	9	28	2	6	7	6	6	6	82

a/ Also continuing contracts of spring notification type.

b/ Also tenure-type continuing contracts.

c/ The two cases are an action for damages and injunctive relief under the federal civil rights laws by a dismissed college teacher, and an action by a teacher challenging the constitutionality of the Arkansas statute pertaining to the teaching of evolution.

d/ Involves the transfer of a tenure teacher without following school-board transfer procedures.

e/ Suit seeking recovery under surety bond of a school principal for alleged fund deficits.

f/ Action by a school superintendent for the return of a school removed from his supervisory jurisdiction.

g/ Issue of the legality of charter provision barring a teacher from holding an elected seat on the city council.

merit and qualifications as a teacher. The non-re-employment constituted invidious discrimination in that solely because of her race, this teacher's qualifications were not considered objectively and in comparison with those of other applicants, many of whom had not previously taught in the school system.

The other case relating to desegregation reported here was started by the Kansas attorney general under the Kansas antidiscrimination statute. The action, in which teachers intervened, charged the Kansas City school board with discrimination against Negroes. The Kansas Supreme Court upheld the lower court's findings that the charges that the school board refused to hire Negro applicants for positions in predominantly white schools were unproven. Another issue in the case centered on the involuntary transfer of teachers to effect integration of the staffs in the schools. The Kansas Supreme Court ruled that the school board had no affirmative duty or obligation under the state antidiscrimination statute to take steps to effect faculty integration; nor was the school board compelled to transfer a probationary or a tenure status teacher over his objection because of his race to a school other than the one to which he would be regularly assigned to achieve better faculty integration.

Teacher's oaths--Prominent in 1967 was the continued challenge by teachers of state loyalty oath statutes, among them the statutes in Colorado, Maryland, New York, Oregon, and Texas. The Supreme Court of the United States accepted appeals in the New York and Maryland cases. In Keyishian v. Board of Regents of the University of New York, the Supreme Court in a 5 to 4 decision declared unconstitutional the New York loyalty oath statutes and the implementing administrative regulations of the New York Board of Regents. The statutory sections which required the removal of teachers for treasonable and seditious utterances and acts were held to be invalid under the First Amendment on grounds of vagueness; the statutory sections which made membership in the Communist Party prima facie evidence of disqualification for teaching were held to be impermissibly overbroad.

In accord with the New York decision just cited as well as with its earlier decisions in 1964 and 1966 invalidating, respectively, the loyalty oath statutes of Washington and Arizona, the Supreme Court held that the Maryland loyalty oath, requiring teachers to swear that they were not engaged "in one way or another" in an attempt to overthrow the government by force or violence, was an integral part of the loyalty statute and as such was constitutionally defective in that it failed to draw clear and precise lines between permissible and impermissible conduct.

In other loyalty oath cases, the Oregon Supreme Court ruled unconstitutional the Oregon loyalty oath statute on grounds of vagueness, while a federal district court enjoined the enforcement of the Colorado statute, concluding that the statutory oath of disclaimer of membership in subversive organizations violated due process because it was "unduly vague, uncertain and broad." An appeal from the latter decision has been filed with the Supreme Court of the United States. Also declared unconstitutional by a federal district court was the Texas loyalty oath statute. The statute was found to be impermissibly overbroad in that the disclaimer provisions applied to membership in proscribed organizations with or without specific intent to further the illegal aims of such organizations. The judgment in this case was affirmed by the Supreme Court.

In addition to lawsuits attacking "negative loyalty oaths" or "non-Communist oaths," another type of statutory teacher oath was contested in Massachusetts and New York. The oath in these cases required the teacher to subscribe or affirm (a) that he will support the state and federal constitutions and (b) that he will faithfully discharge the duties of his position to the best of his abilities. The Massachusetts Supreme Court ruled the latter provision invalid because it was too vague a standard to enforce judicially and struck down the entire statute because it was unable to determine whether the legislature intended the two provisions to be separable. In contrast, a federal district court upheld a similar New York statute, ruling that the provision that teachers subscribe to "professional competence and dedication" was clear in its import and imposed no restrictions upon political or philosophical expressions by teachers. The Supreme Court affirmed this judgment in a summary action.

First Amendment rights--The concern of possible abridgement of First Amendment rights of teachers was evidence in three other 1967 cases accepted on appeal by the Supreme Court of the United States. One case pending before the Court as of this writing questions the constitutionality of the Arkansas statute banning the teaching of evolution. In the second case an Illinois tenure teacher was dismissed after a school-board hearing. The discharge came about after the teacher wrote a partially erroneous letter to a local newspaper criticizing the school board's handling of proposals to raise school revenues and its allocation of financial resources between the educational and athletic programs. The board determined that the letter was "detrimental to the efficient operation and administration of the schools" and based the dismissal on the statutory ground that "the interests of the school require it." The Illinois courts upheld that school board, but the Supreme Court of the United States reversed the decision and agreed with the teacher that his rights to freedom of speech were violated. Pickering v. Board of Education of Township High School District 205 (36 Law Week 4495, June 3, 1968).

In the third case, two Alaska teachers were dismissed in 1960 under the state tenure law for immorality then defined as "conduct of a person tending to bring the individual concerned or the teaching profession into public disgrace and disrepute," because of their actions to secure removal of the local school superintendent and members of the school board. The decision of the school board was sustained by the Alaska Supreme Court. On appeal, the Supreme Court on June 3, 1968, vacated the judgment and remanded that case to the state court for further consideration in the light of the Pickering decision.

Teacher-school board relations--The heightened activities of teachers throughout the country for negotiation through their representative organization with school boards on salaries, conditions of employment, and on a voice in matters relating to educational policies is reflected in litigation for determination and clarification of legal rights of teachers and the authority of school boards in relation to these activities.

The question that came before the Illinois and Minnesota courts was whether in the absence of express statutory provisions, school boards have authority to conduct elections to designate the exclusive representative of the teachers to negotiate with school boards, engage in negotiation, and enter into negotiation agreements with the exclusive representative. An Illinois intermediate court ruled that specific legislation to allow school boards to conduct a representation election was unnecessary. The Minnesota Supreme Court, however, ruled to the contrary in view of the fact that the teachers were specifically excluded from the 1965 state public employees labor relations act. This exclusion, the court held, did not render the act unconstitutional as an unreasonable and arbitrary classification of teachers. Subsequently, the Minnesota legislature enacted a law giving teachers organization and negotiation rights with representation through a five-member council on a proportional membership basis in school systems where more than one teacher organization exists.

A lower appellate court in California enjoined the Berkeley school board from holding a representation election among all its certified teachers for membership on a negotiation council. In this decision, which the state's highest court left standing, the lower court ruled that the board's election procedure was contrary to the express provisions of the state negotiation law for public-school employees that representatives on the negotiation council (of five to nine members) be appointed by each of the employee organizations in the same proportion that the teacher membership in each organization bears to the total teacher membership in all the employee organizations in the school system.

In a Wisconsin action, the state's highest court sustained the conclusion of the Wisconsin Employment Relations Board that the Muskego-Norway Consolidated school district in its policy memos and threats of loss of two days' pay if teachers failed to attend the conventions of teacher groups on school days set aside for this purpose constituted interference with the teachers' organizational rights to freely affiliate or decline to affiliate with any employee organization. Further, the court upheld the findings of the employment relations board that the school district engaged in an unfair labor practice in refusing to renew the teaching contract of a teacher who was active on behalf of the local teachers association as a collective bargaining representative. The teacher was entitled to reinstatement with compensation for damages since the motivation for failure to renew his contract was his association activities and not because of any shortcomings as a teacher.

In another suit brought by the Holland Education Association, a lower appellate court in Michigan refused to stay injunction proceedings or dissolve a temporary injunction against a claimed strike of the teachers, and rejected their contention that the statute denying them the right to strike was unconstitutional as violative of the rights of freedom of speech and assembly and freedom from involuntary servitude. On further appeal, the Michigan Supreme Court upheld the constitutionality of the antistrike statute and ruled that the teachers were public employees and subject to the no-strike provisions at the time they withheld their services even though they did not then hold signed employment contracts. However, the court held that the mere showing of concerted prohibited action of public employees does not ipso facto justify injunctive relief. While the trial court has discretion to grant or withhold injunctive relief, there was no proof in this case to support the issuance of a temporary injunction, according to the Michigan Supreme Court. Therefore, it ordered the temporary injunction dissolved and remanded the case to the trial court for inquiry as to whether the school board had refused to bargain in good faith, as the teachers claimed, and in the light of the facts, whether an injunction should issue at all. (157 N.W. (2d) 206, April 1, 1968.)

In a first published decision anywhere on the legality of sanctions, a New Jersey trial court issued an injunction against sanctions imposed on the Union Beach school system by the local, state, and national education associations. This court held that the actions taken by the teachers association constituted coercive activity in violation of the New Jersey constitution.

CERTIFICATION AND ELIGIBILITY

California

Sarac v. State Board of Education
57 Cal. Rptr. 69
Court of Appeal, California, Second District, Division 3, February 16, 1967.

Following administrative proceedings, the state board of education revoked the secondary teaching credential of the teacher for immoral and unprofessional conduct. The revocation followed the teacher's arrest and conviction for disorderly conduct for having committed a homosexual act on a public beach. The teacher then sued for a court order to compel the board to rescind the revocation of his credential. After hearing evidence, the trial court concluded that the teacher had committed an act involving moral turpitude; that this conduct constituted both immoral and unprofessional conduct within the meaning of provisions of the Education Code; that the revocation of the credential was correct in that the teacher demonstrated he was unfit for public-school teaching within the meaning of the statute; and that the board's decision was supported by the weight of the evidence.

On appeal, the teacher attacked the judgment as unconstitutional, contending, among other things, that the accusation filed in the administrative revocation proceedings was erroneous as to his plea of guilt, for he had refrained from contesting the prosecution's case under agreement that by doing so, serious criminal proceedings against him under the Penal Code would be dismissed. The teacher claimed this treatment of nonadmission of guilt as if it was an admission of guilt prejudiced the triers of fact against his credibility in view of the sharp conflict in the evidence. He argued further that there was no rational connection between his conduct on the beach and immorality and unprofessional conduct as a teacher and fitness to teach, and therefore, the revocation of his credential was an unconstitutional deprivation of liberty and property without due process of law.

The appellate court rejected these arguments and affirmed the judgment on grounds that the evidence supported findings that the teacher had committed a homosexual act on the public beach; that this behavior clearly constituted immoral and unprofessional conduct and unfitness to teach within the statutory provisions of the Education Code which does not limit such conduct to classroom misconduct or misconduct with children. Because of the teacher's close connection with children in performing his professional duties as a teacher, the court held that there was a rational connection between his homosexual conduct and the consequent action of the state board of education in revoking his credential on statutory grounds of immoral and unprofessional conduct and unfitness for service in the public schools.

New York

Aaron v. Allen
277 N.Y.S. (2d) 784
Supreme Court of New York, Albany County, Special Term, February 21, 1967.

(See page 15.)

De La Rosa v. Board of Examiners of the City of New York
277 N.Y.S. (2d) 337
Supreme Court of New York, Special Term, Kings County, Part I, January 30, 1967.

A high-school teacher, serving under a conditional license, sought an adjudication that the examination which he had taken for the license had been completed and that the board of examiners' jurisdiction over him regarding the examination had also terminated; further, that the court permanently stay the board from requiring him to appear before it for an interview in connection with such examination.

The teacher had completed his three-year probationary period under the conditional license as a junior high-school teacher. During this period he passed tests for a senior high-school position and was recommended for a license as teacher of Spanish, subject to certain conditions, among them completion of certain deferred education and an investigation of record and experience, and verification of eligibility and examination ratings. Before being issued his license, the teacher was arrested and charged with violating the Penal Law, of which charge he was acquitted after trial. One year after his arrest he was employed in a senior high school as a probationary teacher, but the board of examiners requested him to appear for an interview in connection with part of his "appraisal of record" test, pursuant to the bylaws of the board. The teacher appeared before a committee of the board which sought to examine him on the arrest. He refused to answer questions but offered to supply a transcript of the trial.

In his court petition the teacher asserted he was not permitted to be represented by an attorney or union representative at this hearing and that the committee threatened to revoke his junior and senior high-school teaching licenses. He claimed that since he had already been appointed from an eligible list, the board of examiners no longer had jurisdiction over him, and the superintendent of schools became the sole person who could investigate his affairs. He also insisted that the board of examiners could not conduct any examination after one year from the date of the written test, and even if within such time, its investigation of the examinee's qualifications would be limited to the period prior to the date of the announcement of the examination.

The court disagreed with these contentions, holding that the board of education bylaws, which had the force and effect of law, and the Education Law, extended the jurisdiction of the board after a conditional license was granted to investigate an applicant's record to verify his eligibility and examination ratings. The teacher had passed only the written and oral tests of the board of examiners. The "appraisal of record" test on which a satisfactory grade was required had not yet been given the applicant. Thus, the board of examiners could not certify that the applicant had passed the examination. The court held, therefore, that the board still retained power to investigate the teacher's record.

The teacher claimed also that the board could not inquire into the matter concerning his arrest, since it occurred after the date of the examination, and cited a section of the school-board bylaws that provide that license qualifications shall be effective as of the date of the announcement of the examination, and that new qualifications for licenses shall not affect the validity or the range of employability under licenses issued prior to the date such qualifications become effective; nor shall they affect the validity of licenses issued pursuant to examinations held in whole or in part or announced before the date that such new qualifications become effective.

The court answered this argument by saying that the cited section deals wholly with academic and professional qualifications, and does not apply to the examination itself, which includes the appraisal of records test. In proceeding with such test, the court said, the board may appraise an applicant's record until it finally takes action on the application by certifying that the applicant passed or failed.

Accordingly, the petition of the teacher was dismissed. The court noted, however, that this disposition related only to the senior high-school teaching position and was not intended to dispose of any issue that might arise with respect to the junior high-school position.

Goldberg v. Board of Examiners of the Board of Education of the City of New York
279 N.Y.S. (2d) 427
Supreme Court of New York, Appellate Division, Second Department, May 1, 1967.

(See Teacher's Day in Court: Review of 1965, p. 10.)

A lower court annulled a resolution of the New York City Board of Education which denied petitioner's appeal from a rating of "unsatisfactory" in an inspection test held for a license as a director of health education. The court directed the Board to grant to petitioner a continued inspection test. This determination was based on the fact that the examination panel was not legally constituted when the petitioner took his inspection test according to the bylaws of the examiners of the New York City Board of Education. Petitioner had contended that the two temporary assistant examiners serving on his examining panel were not approved or certified by the New York City Civil Service Commission.

On appeal, the decision was reversed. The court held that the bylaws were rendered obsolete by statutory amendment and an exchange of letters between the Board and the Commission and did not impose on the Commission a requirement that it approve the employment of assistant examiners before they could be so employed. The lower court was therefore reversed in its determination and the proceeding was remitted.

Puentas v. Board of Education of Union Free School District No. 21 of Town of Bethpage, Nassau County, New York
276 N.Y.S. (2d) 638
Court of Appeals of New York, November 29, 1966.
Appeal filed in the Supreme Court of the United States, September 1, 1967, 36 Law Week 3092.

A high-school teacher brought court proceedings to review the school board's determination that he was guilty of conduct unbecoming a teacher and of insubordination, and suspending him from his position without pay.

As president of a teachers federation, the teacher had written a letter, addressed to the school board, which he distributed to teachers and administrators in the school district. In the letter he criticized the school administration for failing to renew the employment of a certain probationary teacher. One charge alleged the teacher was guilty of unbecoming conduct on the grounds that his letter contained defamatory accusations against the administration of the school district and the school principal. The other charge alleged insubordination on the grounds that his letter encouraged defiance and contempt of duly constituted authority, was contumacious in character; and that the teacher refused to answer questions of the school superintendent about the letter without advice of counsel.

The school board found that the letter had been written without the consent of the probationary teacher named and after she had resigned and had accepted employment elswhere; that the letter had not been authorized by a majority of the members of the teachers federation; and that the accusations in the letter were false.

The Appellate Division, by a divided court, entered an order confirming the school board's determination. On appeal by the teacher, the Court of Appeals affirmed the order.

An appeal from this decision has been filed in the Supreme Court of the United States.

Schwartz v. Bogen

281 N.Y.S. (2d) 279
New York Supreme Court, Appellate Division,
Second Department, June 12, 1967.

(See Teacher's Day in Court: Review of 1966, p. 9.)

A New York City teacher seeking a license as high-school department chairman sought to examine the standard against which her performance was measured in an examination. The Board of Examiners refused to give more than photocopies of the teacher's own examination papers and a rating sheet. A suit to review the action of the Board of Examiners resulted in a decision in favor of the board, and the teacher appealed.

On appeal, the court held that refusal to permit the teacher to examine the standard against which her performance on the test was measured was unreasonable and substantially impaired her right of appeal. The examinee should be able to check conclusions of the examiners by some objective comparison. To challenge a standard he has never seen or forego his right of review, "is an unreasonable choice to impose."

The board argued that, despite its refusal to furnish standard answers for many years, thousands of applicants had been able to prepare and file appeals, and that approximately 15 percent of the appeals were successful each year. The court rejected this argument, saying, "The fact that some appellants have managed successfully to overcome a handicap that should not have been imposed is no argument for continuity of that handicap."

In order to obtain an adequate review of her case, the court directed that the teacher be furnished with "the standard answers and rating directions applicable to the essay-type parts of her examination and [be allowed] a reasonable time to prepare and file an appeal."

White v. Board of Education of the City of New York

277 N.Y.S. (2d) 359
Supreme Court of New York, Special Term,
New York County, Part I, June 22, 1966.

The teacher had been employed as a substitute teacher for about two years up to June 1964, and as a regular elementary teacher from September 1964 to June 1965, having passed the written part of the examination and having been issued a conditional license as of February 26, 1964, "subject to investigation of record" in accord with recommendations of the Board of Examiners and pursuant to bylaws of the school board. The bylaws required an "appraisal of record" of an applicant, and provided that the record may be subject to appraisal up to the time of final action on the application.

The teacher was notified by the Board of Examiners on June 29, 1965, that his record was unsatisfactory, and, based on its recommendation, his conditional license was terminated as of August 31, 1965. The primary basis for this unsatisfactory rating was his conduct as a substitute teacher between March 19, 1964, and May 15, 1964, which culminated in his dismissal from the school where he worked. Dismissal was for insubordination, for failure to show courtesy and respect for lawful authority, and for inability to get along with fellow teachers. Subsequently, the teacher's substitute license was revoked for conduct unbecoming a teacher. At the request of the Board of Examiners, the teacher appeared and was questioned on the sufficiency of his record on March 5, 1965, at which time he was confronted with the report of his former principal and was given an opportunity to rebut the report and other reports critical of his conduct at schools where he had previously taught and to submit further materials he wished the board to consider before making its decision.

After an unsuccessful appeal of his unsatisfactory rating to the committee of appeals of the Board of Examiners, the teacher brought court proceedings for annulment of the rating, the termination of the validity of his conditional license, and the termination of his services as a regular teacher, and for an order that he be reinstated with back pay. He contended that he had already acquired tenure as a regular teacher and that his license could not be revoked without notice of charges and a hearing;

that his unsatisfactory rating was arbitrary and capricious; and that the board had no right to take into account his record subsequent to March 17, 1964, the date he was notified of passing the examination.

The court denied the relief requested and dismissed the teacher's petition. The court held, on the evidence before it, that there was a proper and reasonable basis for appraising the teacher's record as unsatisfactory; that, therefore, the teacher had never in fact passed the entire examination, and his conditional license issued prior to the completion of the investigatory portion of the examination in accordance with the bylaws of the school board, was legally terminated.

The court rejected the contention that before the termination of the license, the teacher was entitled to a full hearing on the charges against him, saying that a hearing was mandatory only for a teacher with tenure, a status this teacher had never attained.

SALARIES

District of Columbia

Crawford v. United States
376 F. (2d) 266
United States Court of Claims, March 17, 1967.
Certiorari denied, 88 S. Ct. 781, January 15, 1968.

Overseas teachers brought suit against the United States government for recovery of back pay allegedly due for the years 1959 through 1966. Throughout this period, costs for operating the overseas schools were covered by various appropriation bills, each one restricting the amount to be spent on education by a "per-pupil limitation." In 1959, a law was enacted requiring, among other things, that "the Secretary of each military department shall fix the rates of basic compensation of teachers and teaching positions in his military department in relation to the rates of basic compensation for similar positions in the United States but no such rate of basic compensation so fixed shall exceed the highest rate of compensation for similar positions of a comparable level of duties and responsibilities under the municipal government of the District of Columbia."

In order to carry out the dictates of the law, meetings were held among the Department of Defense, the Overseas Education Association, and the National Education Association. The result was the promulgation of salary determination procedures, which provided for annual comparison of compensation rates with the salaries offered in school jurisdictions of 100,000 population and over. These procedures were keyed to the per-pupil limitation established by Congress, and the comparison was used as a basis for seeking adjustments of that limitation in order to increase the compensation schedule.

In their petition, the teachers claimed that teachers' salaries under the law were to be fixed so that they would be equal to the salaries paid to teachers in similar positions in schools in the District of Columbia; that, alternatively, teachers' salaries were to be fixed at rates equal to those paid to teachers in similar positions in schools in the United States but not to exceed the highest salaries for comparable positions in the District of Columbia; and that continuing readjustment was mandatory without regard to the per-pupil limitation contained in the appropriation acts.

The United States contended that the act required no continual readjustments in salary rates without prior congressional approval and in fact there were no funds to pay the salaries now claimed; and that assuming for the sake of argument that Congress had established a specific mandatory statutory rate, the fixing of annual expenditure ceilings via the per-pupil limitation would result in an implied repeal of any obligation the 1959 law was said by the teachers to have been created.

The court dismissed the teachers' petitions and held that the statutory words "in relation to" were not to be interpreted as meaning that overseas teachers salaries must be "equal to" salaries for comparable positions in the District of Columbia schools. To so interpret the statute would render meaningless the language prohibiting the "fixing of salaries in excess of those paid to the District of Columbia teachers" and requiring the comparison of overseas rates with prevailing rates for comparable positions in the United States. Nor did the act require rates of basic compensation to be equal to those paid to teachers in similar positions in schools in the United States, since nowhere did the Congress fix the salaries or define the positions to be looked at for comparison purposes. The Congress merely set the boundaries and vested the Secretary of Defense with discretion to issue regulations governing the basic rates of compensation.

Having decided that the standard of equality to comparable positions in the District of Columbia or throughout the United States was not prescribed by the Congress, and furthermore, that the Secretary of Defense was clothed with discretionary power to fix the salaries, the court turned to the regulations promulgated by the Secretary of Defense under the act to ascertain whether the teachers' salaries were to be continually adjusted in accordance with increments given to teachers serving in similar positions in the United States as defined in the regulations, independent of the appropriation authorized.

Upon examination of the legislative history of the 1959 act, the court concluded that the salaries of the overseas teachers were keyed to the per-pupil limitation contained in the congressional appropriations acts and were to be fixed within such limitation in the discretion of the Secretary of Defense. Further, the act did not create a mandate for continual adjustment of salaries in accordance with increments given teachers in the United States. In so holding, the court rejected the teachers' argument that the 1966 amendment to the act requiring that the salaries of overseas teachers be equal to that of the salaries of teachers in urban areas of 100,000 population or over manifested the positive intent of the Congress when it enacted the original legislation in 1959. The Supreme Court of the United States denied a petition for a writ of certiorari for a review of this decision.

Illinois

People ex rel. Cinquino v. Board of Education of City of Chicago
230 N.E. (2d) 85
Appellate Court of Illinois, First District, Fourth Division, August 30, 1967; rehearing denied September 28, 1967.

A teacher appealed from a judgment denying his prayer for reinstatement to Lane IV of the board of education salary schedule for holders of Ph.D. and Ed.D. degrees. He also sought salary payments from the time of his initial application for Lane IV status and salary payments from the time of his removal from Lane IV to the present.

The teacher had earned 65 semester hours of credit beyond the master's degree in universities in the United States. After he took three additional graduate courses from the University of Naples (Italy), his doctoral thesis was accepted by that university and he was awarded the degree of Doctor of Letters. In processing the teacher's application for Lane IV placement, the school board wrote to the U. S. Office of Education for an evaluation of the Italian degree. The response was that on the basis of the teacher's graduate studies, plus his examination for degree of Doctor of Letters from the University of Naples, the teacher's education "would correspond roughly to a doctor's degree in the United States."

The board then notified the teacher that its records showed only that he passed the examination for the degree, and that it could take no further action until it had a positive statement that a doctor's degree had been awarded. No mention was made that the degree was insufficient for Lane IV placement.

Upon his second application, some three years later, the board placed the teacher on Lane IV. He then applied for back salary retroactive to the date of his original application. Approximately a year and a half later, the board revoked the teacher's placement in Lane IV and began deducting, without his consent, $50 a month out of his salary in order to recover $1,625 paid as salary increment while he was on Lane IV.

The trial court ruled inadmissable evidence that 10 other teachers in Lane IV (of 115) did not have Ph.D. or Ed.D. degrees, holding that the board was bound by the specific language of its own rule that the teacher was not entitled to Lane IV placement. It further held that the teacher was entitled to recover the amount withheld from his salary after his removal from Lane IV but ruled that he was not entitled to reinstatement since the rules of the board specifically required a Ph.D. or Ed.D. degree, which the teacher did not have.

On appeal, the lower court decision on the issue of reinstatement was reversed. The appellate court held that once the board placed the teacher on Lane IV, its attempt to re-evaluate and revoke his placement constituted an arbitrary and discriminatory action since the placement was not made through fraud, duress, or mistake. The court found also that the teacher's initial placement in Lane IV was proper, for it was in the discretion of the board to interpret its own rules liberally to allow degrees equivalent to the Ph.D. and Ed.D. for Lane IV placement. Further, evidence of the other teachers in Lane IV without the specific degree required by the board rules should have been admitted to show precedents furnished by the board itself. The evidence that 10 other teachers received and retained placement in Lane IV without specific Ph.D. or Ed.D. degrees, the court said, constituted conclusive proof of arbitrary and discriminatory board action as to the teacher in this case.

The question of whether the teacher's salary increment should be retroactive to the date of his first application for Lane IV placement was remanded to the trial court for a determination of the school-board policy.

Kentucky

Huff v. Harlan County Board of Education
408 S.W. (2d) 457
Court of Appeals of Kentucky, July 1, 1966.

(See page 27.)

Mississippi

Chatham v. Johnson
195 So. (2d) 62
Supreme Court of Mississippi, January 3, 1967.

A school principal who was given leave of absence without pay for the period June 15, 1963, to September 1, 1963, while campaigning for the office of county school superintendent, sought a writ to require the county superintendent of education to pay him $938.50 alleged to be due him as salary for the period.

A county board of education regulation provided that any employee under contract with the board, announcing and/or qualifying for public office, is granted or requested to take a leave of absence and a substitute may be hired to take his place until the election or expiration of the employee's contract. A state statute provided that a teacher who taught for a full school year was entitled to receive the full number of payments called for in his employment contract without regard to his activity when his services were not required by the school board.

The principal contended that under this statute the county board of education was without authority to deny his pay, since the proof showed that he performed all the duties required by his contract during the period in question. The trial court issued an order denying the writ and the principal appealed.

The appellate court held that the trial court did not abuse its discretion in denying the writ of mandamus directing the school superintendent to pay the salary claim to the principal. To grant the writ, it would have been necessary for the trial court to determine that the order of the school board granting the leave of absence without pay was void, and since the county board was not a party to the suit, the decision would not have been binding on the board. Issuance of the writ would have left the school superintendent in a precarious position, for he had no control over the board's action and could not rescind the order of the board.

The court was of the further opinion that the school board had the authority to require a teacher to take a leave of absence without pay during the time he engaged in a political campaign. In this instance, the court said, if the principal, whose contract required him to perform duties during the summer months while classes were not being held, performed any duties during the period of his leave of absence, he did so as a volunteer, and he was not entitled to pay as a matter of right.

New York

Aaron v. Allen
277 N.Y.S. (2d) 784
Supreme Court of New York, Albany County, Special Term, February 21, 1967.

The New York City board of education refused to reclassify petitioners from the title of junior principal of elementary school to the title of principal of elementary school and to pay them the salary of a principal. After the state commissioner of education dismissed petitioners' appeal, they sought a judgment annulling his determination and also requested that the board reclassify and pay them as principals.

The commissioner had determined that the board's policy of differentiating between the position and salary of principal and the position and salary of junior principal, based on school size, even though each performs the same types of duties, is neither arbitrary, unreasonable, nor discriminatory.

Petitioners, all licensed as junior principals, contended that since they performed the same duties and possessed the same qualifications as licensed principals, the commissioner's decision was arbitrary and discriminatory in sustaining the board's action in establishing a lower salary schedule for the position of junior principal.

The court held that under the applicable Education Law and the bylaws adopted by the board of education, petitioners, having no license as principal, had no legal right to the title of principal and the salary attached to that position. It is the right to the position, obtained in the manner as prescribed by law, the court said, that determines the right to the salary incident to the position, and not the performance of the duties in the position. There being no showing of arbitrariness in the commissioner's determination, his order was upheld as final and conclusive.

Goldblatt v. Board of Education of the City of New York
275 N.Y.S. (2d) 550
Civil Court of the City of New York, New York County, Special Term, Part I, November 22, 1966.

A New York City teacher who served on a jury sued to recover the difference between the salary she would have earned for teaching and the salary she received as a juror. She contended that the school board discriminated against her because of her sex in that it paid men teachers for jury duty but refused to pay women teachers, and that this refusal was illegal and antisocial.

By statute, men are required to serve on juries, but women are automatically entitled to an exemption. The bylaws of the New York City school board provide that absence for "required" jury duty shall result in no salary loss, and the agreement between the school board and the United Federation of Teachers (UFT) likewise provided that teachers "required" to serve jury duty would receive full salary less compensation received as a juror.

The court ruled that the school board did not discriminate against the teacher because of her sex; and since under the statute the woman teacher was not compelled to serve on a jury, she could not recover the differential between the compensation she received for voluntary jury service and the salary she would have received for teaching. To pay the differential, the court said, would violate the contract between the school board and the teachers union as well as the board bylaws.

Ohio

Board of Education of Springfield School District v. Butts
230 N.E. (2d) 125
Court of Appeals of Ohio, Clark County,
January 28, 1965.

(See Teacher's Day in Court: Review of 1965, p. 14.)

The school board brought an action for a declaratory judgment to determine the rights under the Ohio School Foundation Law of 38 teachers each of whom had served in the armed forces. All parties stipulated that the trial court was to determine three issues: (a) whether a fractional part of a year served in the armed forces is to be considered in computing service credits; (b) whether the statute of limitations applied against some of the teachers; and (c) whether the school board was entitled to credit for any sums paid to the teachers as salaries in excess of the minimum salary required by law.

The trial court ruled as follows: (a) Each teacher was entitled to compensation in the amount of the difference between the amount paid him and the amount he would have been entitled to, according to the salary schedule plus increments, had he been given credit for full time spent in the armed forces. (b) The fact that the board paid salaries in excess of the minimum required by law was no defense. (c) The teachers have a cause of action when the school district fails to pay the minimum salary established by statute. (d) The right of the teachers to recover unpaid minimum salaries is barred by the six-year statute of limitations.

Pertinent was the state minimum salary law which until 1960 required that full credit on the salary schedule be given to any person for time spent in the armed forces. A 1960 amendment required the school board to give full credit on the salary schedule for each year of service outside the district, or for military service, or a combination of these, to a total of at least five years. The military service provision was further amended as of January 1, 1962, to provide for full credit in the form of an annual salary increment on the schedule for each year of 12 months of service in the armed forces.

The appellate court was of the opinion that the minimum salary statute as amended prior to January 1, 1962, was intended by the legislature to allow school teachers full credit for full time spent in military service, within whatever limits specifically set forth. The purpose of the credit provision, the court said, was to place veterans as nearly as possible in the same earnings and employment position they would have occupied had they not spent time in the armed forces. Accordingly, the court upheld the finding of the trial court that each teacher was entitled to full credit for full time spent in the military forces and that the amendment effective as of January 1, 1962, allowing credit for each 12 months of military service was not retroactive.

The court found untenable the board's argument that it should be allowed a credit for any sums paid to the teachers in excess of the minimum salary schedule required by law. The law allowed the board to establish and file any salary schedule in excess of the required minimum salaries which the tax resources of the district could support. The court said that to construe the statute, as the school board suggested, so as to apply full credit for military service only on the basis of the state minimum salary schedule, but not on the district's established schedule in excess of the minimum, would "negate and render inoperative every provision contained in the applicable statute." The court concluded that in view of the intent and purpose of the statute, all of its provisions apply to any schedule adopted by the board during the period in question. Hence, the mere fact that the board established a salary schedule in excess of the statutory minimum did not excuse the board from recognizing any credit due the teachers for military service.

Finally, the court upheld the trial court's determination that the statute granting credit for military service created a cause of action for the teachers, and therefore, the six-year statute of limitations applied to claims brought by the teachers for salaries due for full military service credit.

CONTRACTS

Arkansas

Davis v. Board of Trustees of Arkansas A & M College
270 F. Supp. 528
United States District Court, E. D. Arkansas, Pine Bluff Division, September 1, 1967.

(See page 55.)

Special School District of Fort Smith v. Lynch
413 S.W. (2d) 880
Supreme Court of Arkansas, April 24, 1967.

Because of illness, the teacher found herself unable to perform her teaching contract for the school year 1964-65. On December 9, 1964, she requested and was granted a leave of absence for the remainder of the school year. According to provisions in the administrative policy handbook, a teacher on leave was entitled to re-employment, provided there was a vacancy which in the judgment of the school superintendent the returning teacher was qualified to fill. The employee on leave was required within 30 days of the expiration of the leave to give written notice to the superintendent of his intention to return to the employ of the school system or to submit his resignation.

During the leave period, the teacher applied for and received disability benefits for several months from the state teachers retirement system, but returned all disability retirement checks received after July 1965. Sometime in late May or early June 1965, the teacher orally informed the superintendent that she desired to again teach at the start of the fall term and had been told by her doctor that, if her health continued to progress, she would be able to teach in the fall. It was not until August 9, 1965, that the teacher for the first time wrote the school superintendent requesting that her leave be terminated and that she be returned to her teaching position.

When the school board did not give her a contract, the teacher instituted suit on August 31, 1965, seeking an order directing the school board and the superintendent to issue her a teaching contract for 1965-66 and restraining them from entering into any other teaching contracts until hers was issued. The school authorities contended that the teacher did not comply with notice requirements for reinstatement as called for in the leave provisions. The trial court found that under statutory provisions regarding notice to teachers of nonrenewal of their contracts, the teacher was entitled to her contract and to recover compensation at the prevailing rates minus the amounts paid to her by the retirement board from October 1, 1965, to September 1, 1966.

The school board and the superintendent sought a reversal of this decision. The question was whether, in changing her status from an active teacher to that of an inactive one on leave and drawing disability payments, the teacher still retained the identical rights of a teacher who completed her contract, or whether it was first necessary that she follow established procedures to become reinstated to active standing.

Pursuant to statutory provisions, all teaching contracts were to be renewed from one school year to another unless the school board notified the teacher in writing during the period of the contract or within 10 days after the close of school term that the contract would not be renewed, or "unless such contract is superseded by another contract between the parties." Admittedly the board did not send the teacher the required 10-day written notice.

The court held that these provisions could have reference only to teachers who have fulfilled their contracts and were eligible to be "carried over" to another school year, and did not apply to the teacher in this case who had not fulfilled her contract for the 1964-65 school year albeit through no fault of her own. The administrative leave of absence granted the teacher constituted another contract, the court ruled. But whether the sick leave was accomplished under a new contract or under the terms of the teaching contract for 1964-65, the teacher breached her contract in that she failed to comply with the school-board requirement of written notification to the superintendent of her intention to return to active status within 30 days of the expiration of the leave period.

Decision of the trial court was reversed.

Colorado

Big Sandy School District No. 100-J, Elbert County v. Carroll
433 P. (2d) 325
Supreme Court of Colorado, November 13, 1967.

The school board informally "authorized" the superintendent of schools to "contact and employ" a combination principal and teacher for one of its schools. To facilitate the process, the superintendent was given a contract signed in the blank by the president and the secretary of the board. Subsequently the superintendent came to terms with a teacher, filled in all the terms of the contract and gave it to the teacher. The teacher claimed he signed and returned the contract. Ten days later the teacher was purportedly discharged by the superintendent without a hearing. The teacher sued the school board, alleging an employment contract and its breach by the board when he was wrongfully discharged "without good cause shown or a hearing."

The board contended that there was no valid contract since the board could not lawfully delegate to the superintendent its powers to employ teachers. The trial court rendered judgment for the teacher for the amount of the contract plus interest.

The question on appeal was whether a school board may delegate to its superintendent of schools the "power" and "duty" to employ teachers.

The statute relating to the powers of school boards provides that it shall be the duty of every school board to employ or discharge teachers and fix their salaries.

The court reversed the decision in favor of the teacher and ordered the case dismissed. It held that the power to employ teachers and fix their salary is not a ministerial function which with sufficient guidelines can be delegated, but on the contrary is a legislative or judicial power involving the exercise of considerable discretion, vested exclusively in the school board and cannot be delegated. Hence, there never was a valid and binding contract between the teacher and the school district.

Ledbetter v. School District No. 8, El Paso County
428 P. (2d) 912
Supreme Court of Colorado, June 19, 1967; rehearing denied, July 17, 1967.

A teacher sued the school district, seeking a decree that the school board's attempted termination of his contract was a nullity.

A Colorado statute provides that any teacher not under continuous tenure shall be deemed reemployed for the succeeding year unless the employing school board shall cause notice in writing to be given the teacher on or before the 15th day of April of the term in which the teacher is employed.

During his third successive year of teaching in the district, the board on April 11, 1963, sent to the teacher by registered mail a notice of termination effective at the beginning of the following school year. The letter was sent to the teacher's former address and was rerouted by the post office to his current address on April 13, two days before the statutory deadline for such notice. Because the teacher was not home, a notice to call at the post office was left at his home. The teacher testified that he did not receive this postal notice but admitted that he did get a final notice on April 18. He picked up the letter at the post office on April 23.

The trial court dismissed the suit, finding that since the teacher had failed to receive the letter before the deadline by reason of his own absence, he, therefore, could not defeat the giving of notice.

On appeal, the judgment was affirmed. The court distinguished between statutes which require that notice must be "served" or "received" and statutes, such as the one involved herein, requiring only that notice be "given." The court held that the school district gave notice to the teacher within the time required by the statute. The means used to convey the notice was an acceptable one in the law, and the delay in delivery was through no fault of the school district.

Yribia v. Huerfano School District RE-1
423 P. (2d) 335
Supreme Court of Colorado, February 6, 1967.

The teacher, holder of a life certificate to teach in Colorado public schools, was employed by the school district from 1958 to 1960 when her services were terminated. She had not served long enough to acquire tenure. Her notice of termination stated that if additional teachers were to be employed in the future, she would be given first consideration. The teacher sued, contending that this statement amounted to a contract to re-employ her. The court held that this statement was not intended to create any contractual liability, and that no contract was established by the evidence in this case.

Georgia

Kelley v. Spence
156 S.E. (2d) 351
Supreme Court of Georgia, July 14, 1967.

The teacher's petition for court relief showed only that this election by the school board to teach an additional 12 months was revoked by the board before the contract was executed, although the teacher alleged he had notified the board of his acceptance. The lower court sustained a demurrer to the petition. This judgment was affirmed on appeal.

In view of the statements in the petition, the court held that there never was any contract between the parties which would require the board to give the teacher notice and a hearing pursuant to statute since he was no longer a teacher upon termination of his present contract. Nor could the superintendent be required to execute and present a contract to the teacher since the board had rescinded his election to employment before any contract was executed. And since by statute all teachers' contracts must be in writing, the teacher's acceptance of his election would not be binding on him or the board.

Massachusetts

Konovalchik v. School Committee of Salem
226 N.E. (2d) 222
Supreme Judicial Court of Massachusetts,
May 10, 1967.

By a four-to-three vote, the school committee decided to award the plaintiff a three-year contract as football coach. In another vote, the city solicitor was asked to draw up a contract and have it at the next meeting. Because the city solicitor was in the hospital and unable to draw up the contract, a committee member of the majority typed out a contract substantially in the form of the plaintiff's existing contract but did not include the term, the compensation, and another unrelated item. The plaintiff signed it.

On the date the school committee was to meet to approve the draft, the three dissenters adjourned the meeting for lack of a quorum although they knew that some of the majority members were in the building. At the same time, the majority members were signing the contract form in the secretary's office, where most contracts were signed. A copy was given to the plaintiff, one copy went to the office of the superintendent of schools, and one copy was placed in the city hall of records.

The lower court held that a contract was made. The decision was reversed on appeal, since the majority member who drafted the contract and his majority associates were without authority to determine for the school committee the contract terms or to submit any document or offer of contract to the plaintiff. His employment was dependent upon the drafting and submission of a formal contract to the school committee and of approval of such contract by the committee.

Missouri

Lynch v. Webb City School District No. 92
418 S.W. (2d) 608
Springfield, Missouri Court of Appeals,
August 25, 1967.

(See Teacher's Day in Court: Review of 1964, p. 18.)

In this appeal, the school board sought a reversal of summary judgment in favor of the teacher for salary due her for breach of her contract for the 1961-62 school year. In an earlier appeal, the court had ruled with respect to one count in the teacher's complaint that the teacher had not actually tendered her resignation nor had the school board accepted it.

The present issue was whether there was a contract between the school board and the teacher for the 1961-62 school year.

According to the minutes of the school board meeting of March 11, 1961, the teacher had been re-elected for the 1961-62 school year. On April 5, 1961, the school superintendent sent the teacher a form contract together with a notice that she had 15 days or until April 20, 1961, to return the signed contract. The signature of the board's president and the attestation of the board's secretary were not placed on the instrument which recited the number of months school was to be taught and the salary to be paid. The teacher signed the contract on April 5, 1961, but held it until the afternoon of April 11, 1961, when she tried to deliver it to the superintendent. Finding his office closed, she delivered the contract to the vice-president of the board personally in a sealed envelope. This board member took the sealed envelope with him to the board meeting that night and gave it to the board secretary.

Insofar as the record showed, the envelope was not opened during this meeting at which the superintendent advised the board that the teacher had returned her contract unsigned and recommended that the teacher be notified that her services would be terminated at the end of the 1960-61 school year. The board accepted and approved this recommendation. The vice-president had actual knowledge that the envelope contained the teacher's signed contract but did not speak up.

At a special board meeting two days later, the superintendent told the board that in fact the teacher had signed and returned her contract on April 11, 1961, but took the position, as did the board in this appeal, that the instrument signed and returned by the teacher was not a complete contract "signed by the teacher and the president of the board and attested by the clerk of the district." At this special meeting, the board voted to terminate the teacher's contract immediately for violating rules and regulations of the school board.

On the basis of the entire record, the court held that the facts established substantial and sufficient compliance with the statutory requirements that teaching contracts must be in writing and authorized by the board, although the signature of the board president and the attestation of the secretary were not on the instrument the teacher signed and returned. In so holding, the court cited other judicial decisions that a teacher's contract need not be "in any particular form" or in a single document bearing the signatures of the teacher and the president of the board and the attestation of the board secretary.

Judgment in favor of the teacher was affirmed.

North Dakota

Campbell v. Wishek Public School District
150 N.W. (2d) 840
Supreme Court of North Dakota,
March 30, 1967; rehearing denied, June 2, 1967.

The teacher had a contract for the 1963-64 school year to teach fourth grade. The contract contained a clause that in the event the teacher became pregnant, either party could terminate the contract after the fourth month of pregnancy by giving written notice to the other. The teacher advised the superintendent in December 1963 that she was pregnant, and requested that the school board grant her a leave of absence starting January 31, 1964, for the remainder of the school year. The school board complied. The child was born four months prematurely on January 28, 1964, and died that day. In February 1964, the teacher requested to be reinstated. The board denied the request, having hired a substitute teacher for the remainder of the school term. The teacher continued to live in the community until April 1964, during which time she did some substitute teaching in the school district.

This action was brought for alleged breach of contract and for exemplary damages. The complaint alleged that the school board acted in concert and in an arbitrary and capricious manner to deprive the teacher of her contractual rights and to confer them on a substitute teacher, allegedly related to a school-board member. The board denied the allegations. The action was dismissed and the teacher appealed.

The court upheld the judgment, dismissing the action on the grounds that the teacher failed to prove her allegations that the school board breached her contract.

Meier v. Foster School District No. 2
146 N.W. (2d) 882
Supreme Court of North Dakota, December 7, 1966.

A home economics teacher sued the school board to recover salary of $4,183 claimed to be due under a contract she entered into with the school district in February 1958 for the 1958-59 school year. The board terminated the contract at the start of that school year because an insufficient number of pupils had enrolled in the home economics program. The board in defense claimed that the conduct of the teacher during the previous school year had alienated prospective pupils and, therefore, fewer signed up; and that it acted in good faith in discontinuing the program, for it would have received no federal or state aid because of the low enrollment and could not operate the program without this financial assistance.

The trial court rendered judgment for the school district. The decision was reversed on appeal.

The court held that the mere fact that the teacher's services were no longer necessary did not justify her dismissal without compensation in the absence of a statutory or contractual provision permitting termination of the contract prior to its expiration and discharge of a teacher because of lack of pupils. Since the board had breached the contract, the teacher was entitled to recover the amount of salary owing less any sum actually earned or which might have been earned by the teacher in the exercise of reasonable diligence in seeking and obtaining similar employment. The burden of proving reasonable diligence to mitigate damages was on the school board. A review of the record did not show that this burden was met. Therefore, the court concluded the teacher was entitled to recover $4,183 plus interest at 4 percent per year.

TENURE

Alabama

Greene v. County Board of Education of Calhoun County
197 So. (2d) 771
Supreme Court of Alabama, April 6, 1967.

After a public hearing on charges the school board preferred, the board transferred the tenure teacher from his position as head football coach to basketball coach in the same school. The former position carried a supplemental salary of $1,500, and the latter, $750. The notice to the teacher recited that the transfer was without loss of status or for any political or personal reasons.

The state tenure law provides that a tenure teacher who has been transferred may appeal from the school-board decision to the state tenure commission to determine if the action complied with the statute or was taken for political or personal reasons. The statutory procedure for this appeal is the filing of a notice of appeal with the commission and of a copy with the employing school board. An appeal from the cancellation of a contract of a tenure teacher is also to the state tenure commission, but the appeal procedure is the giving of written notice within a specified time to the local school superintendent or the chairman of the local school board.

In this instance, the teacher followed the appeal procedure for cancellation of contract. The state tenure commission overruled the local board's action. The board instituted court proceedings for a writ that the commission's order be vacated. The writ was granted and an appeal followed.

The court concluded that the assignment of the teacher from football coach was a transfer from one position to another in the school, and consequently, an appeal from the local board's decision should have been perfected by filing the notice of appeal with the state tenure commission. The court held that since the teacher failed to comply with the statutory mandate, the commission had no jurisdiction to review the transfer, and its order overruling the local board was null and void.

Judgment of the lower court vacating the order of the state tenure commission was affirmed.

Alaska

Watts v. Seward School Board
421 P. (2d) 586
Supreme Court of Alaska, December 7, 1966; rehearing denied, February 3, 1967.
423 P. (2d) 678
Certiorari granted, Supreme Court of the United States, October 9, 1967, 88 S. Ct. 34.

(See Teacher's Day in Court: Review of 1965, p. 19; Review of 1964, p. 22.)

After a hearing the school board in 1960 dismissed two tenure teachers on the grounds of immorality, which under the Alaska tenure law then in effect was defined as "conduct of a person tending to bring the individual concerned or the teaching profession into public disgrace or disrepute." A separate ground for dismissal was that the teachers were guilty of substantial noncompliance with school-board Regulation E(7) which provided that grievances, complaints, and communications from employees shall be submitted to the school board through the superintendent and for an appeal to the board. The school board found both teachers guilty of immorality for their part in compiling, reproducing, and distributing, in violation of this regulation, an open letter containing false statements disparaging the superintendent. In addition, one teacher was found guilty of immorality, in that he held private conversations with various teachers in which he solicited their support to oust the school superintendent from his position. The immorality of the second teacher was that, in view of the lack of success in ousting the school superintendent, he made a speech to a labor union about getting rid of the school board.

In an earlier decision, the Alaska Supreme Court sustained the dismissals. An appeal was taken to the Supreme Court of the United States wherein the teachers contended that their dismissal for engaging in the conduct here described unconstitutionally infringed their rights to political expression guaranteed by the First and Fourteenth Amendments. While this appeal was pending, the Alaska legislature in 1965 amended the statute for revocation of teaching certificates, by defining immorality as "the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude." In addition, the legislature passed a new law that no school-board rule or regulation may restrict the right of teachers to engage in comment or criticism of school officials or school employees, or other public officials, outside school hours, to the same extent that any private individual may exercise that right.

In view of these supervening changes in state law, the Supreme Court of the United States in May 1965 remanded the case for further consideration in the light of the new enactments. In 1966, the definition of immorality in the tenure law was also amended to mean an act which constitutes a crime involving moral turpitude.

In this present appeal, the Alaska Supreme Court again affirmed the judgment dismissing the teachers. The court found that in all but one respect, the evidence sustained the findings of the school board that the teachers were guilty of statutory immorality as then defined in the tenure law. The conclusion of the school board that the speech of the teacher before the union constituted immorality was set aside as unsupported by substantial evidence.

The court concluded that the new statutory definition of immorality in the tenure law could have no retrospective effect because of the absence of an express legislative declaration that the amendment was to operate retrospectively. On this reasoning the same conclusion was reached with respect to application to the facts of this case of the statute prohibiting rules restricting the right of teachers to criticize school or public officials outside school hours.

Another issue before the court was whether the board's conclusion infringed the teachers' right to freedom of speech under the First Amendment. On this issue the court held there was no constitutional question associated with the conclusion of the board that the teachers' publication and circulation of the open letter to the public was substantial noncompliance with Regulation E(7) which required that "grievances, complaints, and communications" be submitted to the board through the superintendent. While the teachers had a constitutional right to compile, reproduce, and distribute the open letter even though it contained false statements concerning the superintendent, the court said, this did not mean the teachers could not be held appropriately accountable where their own acts wrongfully damaged their own and the superintendent's professional prestige, reflected detrimentally on the whole teaching profession and resulted in the public's loss of respect for the two teachers and the local school system.

Under the facts of this case--the false statements in the letter and the substitution of a mass meeting for an orderly process of hearing and appeal as provided in Regulation E(7)--the court concluded that the teachers had exceeded the limits of the exercise of their rights of free speech and were not entitled to require the school board to renew their teaching contracts under the tenure law.

Subsequently, the teachers petitioned the Alaska Supreme Court for a rehearing under the court rules, alleging that the court had "overlooked, or failed to consider" constitutional questions concerning free speech, due process of law, and equal protection of the laws with respect to the teachers' violation of the school board's Regulation E(7). Since at no time in the six years that this case had been in existence had the teachers urged either in the administrative tribunals or in the courts any constitutional questions relating to the validity and application of this regulation, the court held it would not consider constitutional aspects raised for the first time in a petition for rehearing. The rehearing was denied.

The Supreme Court of the United States granted a writ of certiorari for a review of the case.

Note: On June 3, 1968, the Supreme Court reversed the judgment and remanded the case to the state court for further consideration in the light of its decision in Pickering (36 Law Week 3463). See p. 25 of this report.

Arizona

School District No. 8, Pinal County v. Superior Court of Pinal County
433 P. (2d) 28
Supreme Court of Arizona, En Banc, November 2, 1967.

In the dismissal notice to the probationary teacher, the school board stated the causes to be lack of cooperation and insubordination. The teacher sought a writ of mandamus in the lower court to compel the board to issue to her a written teaching contract for the coming school year. In turn, the school board brought suit in the supreme court to prohibit the issuance of the writ.

The teacher contended that the words "lack of cooperation" and "insubordination" are "gross conclusions" and therefore failed to constitute a statement of the reasons for dismissal as required by the tenure law.

The Supreme Court of Arizona prohibited the lower court from interfering with the discretion of the board in the decision to dismiss the teacher.

The court held that notice of dismissal or termination of employment of a probationary teacher contemplated by the tenure law need not specify in detail the time, place, or circumstances of the conduct which the board or school administrator finds detrimental to her efficiency as a teacher, and that the language of a notice is is sufficient if it simply states undesirable qualities which merit a refusal to enter into a further contract. Since the statute did not require "good cause" for termination of a contract of a probationary teacher, the purpose of the statement of reasons, the court said, is simply to point out the teacher's inadequacies so that she may correct them in the event of subsequent employment.

California

Adelt v. Richmond School District
58 Cal. Rptr. 151
Court of Appeal of California, First District, Division 2, April 17, 1967; rehearing denied, May 17, 1967. Hearing denied, California Supreme Court, June 14, 1967.

A tenure teacher was granted a sabbatical leave for the 1963-64 school year. At the time she applied for and was granted the leave she was employed to teach a fourth grade in the Woods Elementary School, a position she held since 1958. Upon return from the sabbatical leave, she was transferred for the 1964-65 school year to another school to teach the fifth-sixth grade. The assignment to the fifth-sixth grade was within the teacher's certification. Although dissatisfied, she taught at her new assignment for a time, but after an unsuccessful attempt to be transferred back to her old school, the teacher resigned under protest.

Later, the teacher instituted suit, asking for an order compelling the school district to reinstate her as a tenure teacher in the fourth grade in the Woods Elementary School, and for back salary. Upon denial of her petition for reinstatement, the teacher appealed.

A section of the Education Code provides that at the expiration of a leave of absence a school employee shall, unless he agrees otherwise, be reinstated in the position held at the time the leave was granted. The teacher contended that upon her return from the sabbatical leave, she was entitled to be reinstated to the specific assignment she held formerly. The school district interpreted the statute as a guarantee that the school teacher will be reinstated in the assignment within the scope of the certificate under which she was employed at the time the leave of absence began.

The appellate court agreed with the school district and held that the above-cited statutory provision did not require the teacher to be reassigned to her former position. Having been assigned within her elementary certificate for the 1964-65 school year, she was accorded the same employment standing she would have enjoyed had she taught the previous year, and no more was required under the statute. The court said that a tenure teacher has a vested right to permanent employment, subject to statutory provisions regulating its termination, but the permanent employment which is protected is that which is within the scope of the certificate under which tenure was acquired. Subject only to the requirement of reasonableness, a school district may assign teachers anywhere within their certificates, according to the needs of the district. "Tenure does not bestow on the school teacher a vested right to a specific school or to a specific class level of students within any school."

Contrary to the teacher's contentions, the court concluded that the transfer was neither arbitrary nor unreasonable nor without relation to the legitimate interests of the school district. The teacher's allegations that lack of experience to teach the sixth grade, loss of honorary position as a senior teacher in her former school, physical strain of a different physical education program in the assigned school, and a threat to her health because of the school's location, were found by the court to have been controverted by the school superintendent, and the consequences attendant to the new assignment magnified out of proportion by the teacher. Also rejected was the argument that the school district was estopped from reassigning the teacher, for there was nothing in the record to sustain the contention that she was led to believe she would be returned to her same grade and school at the end of the sabbatical leave.

The court upheld the determination that the action of the school district in reassigning the teacher after her sabbatical leave of absence was entirely proper.

American Federation of Teachers v. Oakland Unified School District
59 Cal. Rptr. 85
Court of Appeal of California, First District, Division 2, May 17, 1967.

(See page 55.)

Board of Trustees of Mount San Antonio Junior College District of Los Angeles v. Hartman
55 Cal. Rptr. 144
Court of Appeal of California, Second District, Division 3, December 1, 1966.
Hearing denied, California Supreme Court, January 25, 1967.

This is an appeal by a teacher whose employment as a permanent teacher in a junior college was terminated. The dismissal arose out of charges of immoral conduct and evident unfitness for service, statutory grounds for dismissal, filed in court against the teacher by the junior college board of trustees. The reason for starting the dismissal proceeding was cohabitation with a former student. After a trial, the the court found that the teacher had cohabited with the former student, and that neither the teacher nor the student believed in good faith that the student's Mexican divorce was valid, or that the Mexican marriage between the two on the same day as the divorce was valid. The trial court held that the evidence supported the charges and that the charges constituted cause for dismissal on grounds of immoral conduct and evident unfitness for service.

On appeal, the teacher presented a number of arguments, among them that the evidence was insufficient to support the findings of fact or sustain the conclusions of law, and that the trial court erred in certain rulings on admissibility of evidence. None of these arguments prevailed.

The appellate court affirmed the judgment dismissing the teacher in the light of the record.

Finot v. Pasadena City Board of Education
58 Cal. Rptr. 520
Court of Appeal of California, Second District, Division 3, April 18, 1967.

A high-school teacher with tenure status was transferred by the school board from his assignment of teaching government to seniors to home teaching because he insisted on wearing a beard in violation of an administrative policy of the school principal. This policy was adopted on the basis of provisions in the teachers' handbook calling for the practice by teachers, among other things, of the common social amenities, as evidenced by acceptable dress and grooming, and requiring that they be appropriately attired on all occasions, and that they set an example of cleanliness, neatness, and good taste. There was also a school rule against students in the high school wearing beards. The administrative policy against teachers wearing beards was based on the judgment of the school principal that this practice would encourage students to wear beards, as indeed one had already done in emulating this teacher, that it would make it difficult to enforce standards of student dress and grooming, and that it would be a disruptive factor in the educational process in view of the composition of the student body, and past disciplinary and scholastic problems because of students wearing beards.

The teacher brought a court action asking for the issuance of a writ to order the school board to restore him to his former classroom teaching assignment. He appealed from a judgment denying his request on the grounds that the reassignment to home teaching violated various federal and state constitutional rights.

The appellate court reversed the judgment, ruling that under the factual circumstances of the case, the reassignment of the teacher to home teaching violated his constitutionally protected personal liberties under the due process provisions of the state and federal constitutions. The opinion stated:

> A beard, for a man, is an expression of his personality. On the one hand it has been interpreted as a symbol of masculinity, of authority and of wisdom. On the other hand it has been interpreted as a symbol of nonconformity and rebellion. But symbols, under appropriate circumstances, merit constitutional protection...We do not know why [the teacher] chose to start wearing a beard at the start of the school year 1963-64 at John Muir High School in Pasadena, California; but regardless of his reason for so doing--whether it was in emulation of such bearded great men before him as John Muir himself, Socrates or Abraham Lincoln, to mention but three, or as a gesture of nonconformity to the prevailing custom of this generation of clean-shaven male adults or for other reasons--we think that on balance...his constitutional right to do so outweighs the a priori judgment of the principal and superintendent, however experienced, expert and professional such judgment may have been. Prior restraints of expression may not ordinarily be used to limit 1st Amendment freedoms.

The court made it clear that it was not saying that all male teachers in high schools, regardless of the circumstances, may wear beards while teaching in classrooms, or that the practice may not be prohibited in appropriate circumstances. It stated its holding as follows:

> What we hold is simply that, on the record, with the complete absence of any actual experience at the high school involved as to what the actual adverse effect of the wearing of a beard by a male teacher would be upon the conduct of the educational processes there, beards as such, on male teachers, without regard to their general appearance, their neatness and their cleanliness, cannot be constitutionally banned from the classroom and from the campus. (Emphasis is by the Court.)

Finally, the court decided that the teacher suffered a legally remediable detriment in being transferred from classroom teaching to home teaching, although his pay and work remained the same, for in his former assignment he taught one subject to seniors, and enjoyed the rather constant company of the high-school faculty, whereas in home teaching, he taught seven different courses a week, to sophomores, juniors, and seniors, and had extremely limited contact with the school faculty during these hours. The court noted that home-room assignments were ordinarily made on a teacher's specific request, or where a teacher was unable to maintain classroom discipline, neither of which conditions obtained in this case. The reason was his insistence on wearing a beard while teaching in the classroom.

Illinois

Lester v. Board of Education of School District No. 119 of Jo Daviess County
230 N.E. (2d) 893
Appellate Court of Illinois, Second District, November 3, 1967.

The plaintiff acquired tenure as superintendent and teacher and then served as superintendent and principal for a year with no teaching duties at a salary of $9,000. The following year he continued his duties as superintendent and principal and was also assigned to teach all commercial subjects, at a salary of $11,250. The salary increase of $2,500 was due to the additional teaching duties. Thereafter, the board, without specifying reasons, notified the plaintiff that effective with the next school term (1966-67) he would be relieved of his administrative duties and would be assigned to the position of teacher at a salary of $6,300. The plaintiff requested a bill of particulars and a hearing relative to his removal and transfer as a teacher and his decrease in salary. In its bill of particulars, the board stated that no question was raised as to his competency as a teacher and that he was not being dismissed or removed as a teacher but was merely being relieved of his administrative duties and assigned as a teacher only. A hearing was held, at the conclusion of which the board affirmed its prior decision but increased the salary to $6,800.

The trial court affirmed the board's decision and dismissed the complaint. An appeal was taken.

The plaintiff claimed that he was entitled to retention in grade under the tenure law which requires that dismissal or removal be only for "incompetency, cruelty, negligence, immorality or other sufficient cause; and whenever in the opinion of the board the teacher is not qualified to teach or the interests of the school require it."

The state tenure law defines "teacher" as any or all school district employees regularly required to be certified under the laws relating to the certification of teachers, which includes superintendents.

The board conceded that the plaintiff had tenure and was entitled to a hearing before his salary could be reduced. But the board denied that he was entitled to have the provisions of his contract during the last year of his probationary period continued in effect for succeeding years in the absence of cause for removal, arguing that this would disregard the provisions of the tenure law which states: "Contractual continued service status shall not restrict the power of the board to transfer a teacher to a position which the teacher is qualified to fill or to make such salary adjustments as it deems desirable, but unless reductions in salary are uniform or based upon some reasonable classification, any teacher whose salary is reduced shall be entitled to a notice and a hearing as hereinafter provided in the case of certain dismissals or removals."

The question before the appellate court was whether under the provisions of the tenure law, a person employed as superintendent and teacher, who subsequently becomes superintendent, principal, and teacher, acquires tenure in the position of superintendent.

The appellate court agreed with the board that "it would be unreasonable to construe that part of [the tenure law cited above] which provides for the continuation 'in effect the terms and provisions of the contract with the teacher during the last school term of the probationary period,' to mean that neither the board could vary the duties of the teacher thereafter nor the teacher teach or perform any services other than those specified in the contract of the last probationary year."

Since the tenure law allows the board to assign a teacher to a position which the teacher is qualified to fill, the court construed the tenure law to mean that a superintendent "does not acquire tenure in the position of superintendent, but rather acquires tenure as a certified employee of the school district." Therefore, a person serving as principal and teacher, or in any two of such positions, can be assigned to any one of the positions he is qualified to fill, "provided such action by the board is bona fide and not in the nature of chicanery or subterfuge designed to subvert the provisions of the Teacher Tenure Law." A bona fide assignment might also result in a reduced salary where such reduction was "based on some reasonable classification." In the present case, the salary of $6,800 offered to the plaintiff was on a par with other teachers in the same classification, based on training, experience, and duties.

The order of the trial court dismissing the complaint was affirmed.

Pickering v. Board of Education of Township High School District 205
225 N.E. (2d) 1
Supreme Court of Illinois, January 19, 1967.
Certiorari granted, 88 S. Ct., November 6, 1967.

The tenure teacher brought a suit for reinstatement to his position when the school board, after a hearing, confirmed its decision to dismiss him. The dismissal was upheld in the lower court and the teacher appealed.

The teacher was dismissed after publishing in a local paper a letter wherein he criticized the school board and the district superintendent of schools for stating that teachers opposing a referendum should be prepared for consequences for exaggerating the amount of teachers' salaries, for censoring teachers' expressions by requiring prior approval before their letters could be published in a paper, for subsidizing athletes' lunches by overcharging nonathletes, and for their spending on varsity sports while neglecting the wants of teachers.

Trial testimony presented on behalf of the school board tended to show that the statements and accusations in the teacher's letter were untrue or misleading. The teacher had never protested or reported to his superiors about the subject matter of his accusations or charges made in his letter to the newspaper.

The teacher contended on appeal that his remarks were protected by the constitutional right of free speech. The court said the issue in this case was not whether the board of education may be publicly subjected to false accusations but whether to continue to employ one who publishes misleading statements which are reasonably believed detrimental to the schools. The opinion stated:

> Whatever freedom a private critic might have to harm others by the use or misuse of speech, the plaintiff here is not a mere member of the public. He holds a position as teacher and is no more entitled to harm the schools by speech than by incompetency, cruelty, negligence, immorality or any other condition for which there may be no legal sanction. By choosing to teach in the public schools, plaintiff undertook the obligation to refrain from conduct which in the absence of such position he would have had an undoubted right to engage in. While tenure provisions of the School Code protect teachers in their positions from political or arbitrary interference, they are not intended to preclude dismissal where the conduct is detrimental to the efficient operation and administration of the schools of the district.

The teacher contended further that his statements were not "knowing or reckless" falsehoods, but were substantially correct in the criticisms and that the school board lacked statutory authority to dismiss him. Under the tenure law, a teacher may be dismissed, whenever, in the opinion of the board, "the interests of the school require it."

After examining the record before it, and the minute detail with which counsel presented their respective versions of the letter's contents, the court concluded that the board's decision was not against the manifest weight of the evidence. The court said: "A teacher who displays disrespect toward the Board of Education, incites misunderstanding and distrust of its policies, and makes unsupported accusations against the officials is not promoting the best interests of his school, and the Board of Education does not abuse its discretion in dismissing him." The court found nothing in the record to indicate malice by the board members toward the teacher, nor did it appear that the board's action was impulsive or capricious to warrant court interference with the exercise of school-board powers. Therefore, the decision to dismiss the teacher was affirmed.

The Supreme Court of the United States granted a writ of certiorari for a review of this decision.

Note: The United States Supreme Court reversed the decision. Agreeing with the teacher that his rights to freedom of speech were violated, the Court held that in the circumstances in this case, absent the proof of false statements knowingly and recklessly made by the teacher, the exercise of his right to speak on issues of public importance may not be the basis for his dismissal from public employment. (36 Law Week 4495, June 3, 1968.)

Wells v. Board of Education of Community Consolidated School District No. 64, Cook County
230 N.E. (2d) 6
Appellate Court of Illinois, First District, Third Division, June 29, 1967.

The teacher of a class of educable mentally handicapped children sought judicial review of a school-board dismissal action. The board contended that its order of dismissal was not against the manifest weight of the evidence, and that the causes for the dismissal were irremediable. The trial court found that the causes were remediable, and, therefore, the board could not discharge the teacher until it had complied with the statutory requirement that written warning of specific causes be given which, if not removed, might result in charges against her. The appellate court upheld this decision.

Seven reasons were cited in the notice for dismissal: that the teacher was "babysitting" instead of promoting educational growth, had not followed directions for each pupil as listed in the psychologist's report, had kept an inadequate and sketchy journal, was unable to profit from attempts by supervisors to help her improve her program, and was not using her training and experience; that dismissal was deemed to be in the best interests of the school district; and that evidence revealed that the causes for removal were not remediable.

In finding the reasons for dismissal to be inadequate, the appellate court observed that the psychologist's reports were excluded from evidence and no one testified as to the nature of his recommendations. While there was no evidence that the teacher deviated from his instructions, there was the testimony of the teacher that she referred to the reports and used them in working with the children. As to the unsophisticated content of her class behavior journals, the court noted that there was no evidence of criticism of the journals she kept in identical fashion for the two previous years. Failure to perform this ministerial task differently could not have affected the quality of her teaching, the court said, and nothing in the records showed that she would not have complied with a demand to make journal entries more detailed. The court stated that this charge, in any event, would not support the conclusion that the teacher was irremedially incompetent, and the claim that dismissal would be in the best interests of the school district was likewise an insufficient reason for dismissal since it did not state a specific charge, a requirement in the dismissal of a teacher with tenure.

The other charges involved the inability or the unwillingness of the teacher to administer individualized training and discipline to challenge the mentally handicapped children to develop their full potential. The evidence submitted to support these charges related to her alleged failure to mold her teaching to a "curriculum guide" issued by the Illinois Superintendent of Public Instruction to assist teachers of mentally handicapped children in determining goals in education and social adaptability of the children and how they can be aided in achieving them. An area program director testified that in her opinion the teacher's own classroom schedule was not specific enough to be acceptable as a curriculum for that type of class.

Although a number of instances were on the record revealing the alleged failure of the teacher to follow the instructions of supervisors, the court observed that there was no evidence that the teacher had been warned that her failure to conform to the teaching program advocated by the superintendent and principals might lead to charges against her.

The court ruled that the weight of the evidence revealed that the teacher worked very conscientiously and attempted to comply with the views of her superiors, although convinced they were in error. The court further noted that her cooperation with and her attitude toward her co-workers, parents, pupils, and school policy was stated to be "good" in the evaluation sheet written by the principal about three weeks before the teacher's dismissal.

The appellate court agreed with the trial court that the finding of irremediability was against the manifest weight of the evidence and, therefore, the teacher was entitled to a written warning before being dismissed.

Yuen v. Board of Education of School District No. U-46, Kane et al. Counties
222 N.E. (2d) 570
Appellate Court of Illinois, Second District, December 22, 1966.

An elementary physical education teacher with tenure who was an officer of the local teachers' association was charged with misconduct on a number of grounds and was dismissed after a school-board hearing. The lower court reversed the dismissal order and the school board appealed.

The appellate court considered only one of the charges, that the teacher was absent from school one day despite the fact that the school superintendent and the school board had denied his request for two days' absence to attend the Illinois School Problems Commission hearing and a meeting of the National Department of Classroom Teachers. The teacher's request to be absent had been denied because the meetings were unrelated to physical education and because no substitute teacher was available to take over his duties. Nevertheless, the teacher was absent one day, with the result that 150 to 175 pupils were denied the benefit of his teaching.

The teacher contended on appeal that the denial of his request amounted to only a refusal to pay him for the day and not an order for his attendance at school; and further that there was no showing that his conduct was not remedial, and that he should have been given a warning prior to his discharge. These contentions were rejected.

The appellate court held that the teacher's misconduct in willfully absenting himself and neglecting his teaching assignment for the day in direct violation of the decision of the school board was sufficient to sustain his dismissal.

Kansas

Londerholm v. Unified School District No. 500
430 P. (2d) 188
Supreme Court of Kansas, July 6, 1967.

(See page 36.)

Kentucky

Huff v. Harlan County Board of Education
408 S.W. (2d) 457
Court of Appeals of Kentucky, July 1, 1966; rehearing denied, December 16, 1966.

An elementary-school principal with tenure status whose position was abolished at the end of the 1960-61 school year rejected a transfer to a position as high-school principal because he believed he was not qualified. The school board then offered him a teaching position for 1961-62 at a reduction of $2,000 in salary. The principal accepted this position, claiming it was too late to obtain another one. He later learned that he was qualified for the position of high-school principal.

In 1962, the principal sued the school board to recover salary due him under his continuing service contract. Judgment was rendered against him and he appealed. By then the amount in controversy was $5,966. The school board claimed that the failure of the principal to accept a similar position as principal with the same salary justified placing him in another position with a reduction in salary.

The principal's continuing contract did not specify the school or class of position in which he was to be employed. The rule concerning employment under this type of contract is that the board is not prevented from transferring an employee, but as the tenure law provides, the salary of the transferred employee cannot be reduced unless the reduction is part of a uniform plan affecting the entire school district. Moreover, the contract between the school board and the principal expressly provided that it shall continue from year to year and remain in full force and effect unless modified by mutual consent, or unless terminated in accord with the tenure law. There was no modification of the contract by mutual consent.

The court held that under the terms of the contract, the school board could transfer the principal to a teaching position, but could not pay him a salary less than the salary paid him the previous year. The reduction in salary was in violation of the contract and the tenure law.

Osborne v. Bullitt County Board of Education
415 S.W. (2d) 607
Court of Appeals of Kentucky, March 31, 1967; rehearing denied, June 30, 1967.

The tenure teacher appealed a judgment affirming his discharge by the school board after a hearing. The charges included insubordination in refusing to cooperate with the principal, alleged distribution of copies of confidential school records, failure to properly teach and properly control pupil conduct, and a threat to sue the school principal. The teacher had specifically objected to proceeding with the school-board hearing because the charges were too vague to inform him of the nature of his offenses, and did not meet the requirements of the tenure law. In addition, the teacher attempted at the beginning of the hearing to examine the school-board members concerning any prejudice they may have held against him and as to any information they may have had adverse to him. The board members declined to testify at the hearing.

The court upheld the teacher in his contention that the charges as framed did not furnish him with the facts upon which he could reasonably formulate a defense. Moreover, as to the charges of failure to properly instruct pupils in the subjects the teacher taught and properly control pupils, the school board was held to have violated the requirements of the tenure law that where dismissal is for inefficiency, incompetency, or neglect of duty, the teacher must first be furnished with written statements identifying the problems and difficulties.

Further, the court held that the school-board members should have submitted themselves to be examined upon possible prejudice against the teacher since the teacher was entitled to show in the record that those who were responsible for his dismissal were motivated by improper or unfounded reasons. The court expressed deep concern with an administrative procedure which requires a teacher to submit to trial before a school board whose members wear three hats--employer, prosecutor, and trier. The court held that in reviewing the dismissal, the lower court was no longer limited to an examination of the record of the proceedings held by the school board in view of the tenure law provision that in addition to examining the transcript, the court shall hold additional hearings if this seems advisable and consider evidence other than that presented in the transcript of the hearing before the school board.

Since the charges brought by the school board were not sufficient to support the teacher's dismissal and the proceedings before the school board did not meet the requirements of due process, the court ruled that the order of dismissal should have been set aside by the trial court. Therefore, judgment was reversed and the case remanded for proceedings consistent with this opinion and the aforementioned statutory provision.

Story v. Simpson County Board of Education
420 S.W. (2d) 578
Court of Appeals of Kentucky, November 3, 1967.

On being ousted from his position as principal and teacher by unanimous vote of the school board after a board hearing, the principal appealed to the circuit court. The court denied him the right to introduce any evidence and affirmed the dismissal action of the school board. This appeal followed.

In view of its decision in Osborne v. Bullitt County Board of Education (see case digest above) the appellate court ruled that it was error to refuse the principal a trial de novo upon his appeal to the circuit court. For this reason, the case was remanded.

Louisiana

State ex rel. DeBarge v. Cameron Parish School Board
202 So. (2d) 34
Court of Appeal of Louisiana, Third Circuit, August 29, 1967; rehearing denied, September 13, 1967.

A school principal sued the school board and the school superintendent, asking for a writ ordering that he be reinstated in his position as principal.

The principal was first employed in the school system as a social studies and physical education teacher between September 1963 and October 1964. From October 1964 through May 1965, he continued in this capacity and also served as acting principal. In September 1965 he was made principal of the school, and he occupied that position until this court action was filed on April 25, 1967.

The school board had met on April 3, 1967, and authorized the school superintendent to notify certain employees, including this principal, that they would not be re-employed in the 1967-68 school year. The superintendent telephoned this information to the principal the same day. The principal said he would resign and wrote a letter to this effect to the school board. This letter was received by the superintendent on April 5, 1967, who on that day wrote a letter of acceptance to the principal. The principal received this letter accepting his resignation on April 6, 1967. However, on April 5, 1967, the principal decided to withdraw his resignation. He wrote two letters to this effect to the school board, one on April 5, 1967, the other on April 6, 1967. The letters were delivered to the school board on those dates. The school board, acting as a body, formally accepted the resignation at a special meeting held April 13, 1967, and also took action relative to the principal's dismissal under procedures in the teacher tenure law relating to probationary employees.

The trial court was faced with two questions: (a) Was the principal a "permanent teacher" with respect to his position as principal, or was he still serving a probationary term at the time of his dismissal? (b) Was his resignation of April 3, 1967, legally effective.

On the first question, the trial court decided that the principal had permanent tenure status as principal at the time he was notified that he would not be re-employed, and that he would not be removed from his position as principal except for cause and after a hearing, as required by the teacher tenure law.

On the question of the resignation, the trial court expressed doubt that the school board could delegate power to the school superintendent to accept resignations of teachers. But even if the power could be so delegated, the board would have to confer this power on the superintendent expressly or specially. The court was of the opinion that the power and authority of the superintendent to accept resignations could not be implied or inferred from the motion adopted at the April 3, 1967, board meeting wherein the superintendent was directed to notify the principal of his non-re-employment for 1967-68.

The court concluded that since the school board as a body had accepted the resignation at the April 13, 1967, meeting, after the principal withdrew the resignation with due notice to the board, the principal's attempted resignation was without legal effect.

For these reasons, the trial court rendered judgment directing the school board to reinstate the principal in his position, but reserved to the board the right to proceed under the removal provisions of the teacher tenure law or to take any other action not inconsistent with that law.

The judgment was affirmed on appeal.

Verret v. Calcasieu Parish School Board
201 So. (2d) 385
Court of Appeal of Louisiana, Third Circuit, July 19, 1967.

A tenure principal brought suit seeking to overturn the decision of the school board which reduced him in rank to a classroom teacher on grounds of incompetency as an educational executive and his failure to provide his faculty with adequate guidance and leadership. The record showed that 30 of the 33 teachers in the school initiated and supported the complaints which ultimately resulted in removing the principal as head of the faculty. The decision was reached after notice and a hearing in compliance with the tenure law.

The lower court upheld the action of the school board. On appeal, the principal argued that the disciplinary action taken by the board at the formal hearing was premature and unreasonable because he was not given notice of his executive deficiencies and of violation of school-board rules prior to the hearing. He contended that before the disciplinary action could lawfully be commenced, he was entitled as a matter of law to advance warning of deficiencies in his school administration to provide him with an opportunity to correct any inadequacies.

The court disagreed with the contention that advance notice of inadequancies must be given. Moreover, there was ample evidence in the record to indicate that the principal knew or should have known of the rapidly deteriorating relationship between himself and his faculty prior to his removal from office.

The court held that the finding that the principal could no longer adequately fulfill the requirements of his position as principal was supported by the record. It concluded that the formal hearing was conducted with adequate notice and fundamental fairness, and affirmed the decision of the school board and the judgment of the lower court.

Minnesota

Morey v. School Board of Independent School District No. 492, Austin Public Schools
148 N.W. (2d) 370
Supreme Court of Minnesota,
February 10, 1967.

(See Teacher's Day in Court: Review of 1965, p. 27; Review of 1964, p. 32.)

The school board notified the teacher that her contract to teach would be terminated because of her insubordination, harmful teaching methods, disharmony with other teachers, and actions indicating a mental problem which she refused to tend to. On two occasions, however, the board's decision to terminate the teacher's contract was remanded by the Minnesota Supreme Court for further factual findings. The court did not pass on the merits of the case. On remand, the trial court again held the school-board findings insufficient.

Consideration of the record and the board's action led the Minnesota Supreme Court in this third appeal by the board to conclude that the board had determined to end the teacher's contract before there was any hearing, for the board's original resolution and findings in the second case and in this one were not the result of fair consideration of the evidence. Whatever evidence there was to substantiate any of the charges was so polluted with gossip, hearsay, and rumor, having no probative value, that it was impossible to determine whether the board based its findings, such as they were, on probative evidence or matters that should have been excluded altogether.

The court noted that by statute, before a school board could terminate a teacher's contract, the board was required to notify, the teacher in writing and state its reasons for the proposed termination and the teacher was entitled to a hearing before final action was to be taken. A hearing in this context, the court said, must mean a fair hearing, based on evidence having probative value and relevance to establish the alleged facts. The court was convinced that the hearing in this case did not follow even minimum rules of fair play, and was arbitrary and a nullity. Therefore, the board could either dismiss the matter or hold a new hearing, observing minimum requirements of fair play, and base its decision on evidence that has probative value and relevance.

The lower court decision denying the school board's motion to reinstate its resolution terminating the teacher's contract was affirmed.

New Jersey

In Re Fulcomer
226 A. (2d) 30
Superior Court of New Jersey, Appellate Division, January 17, 1967.

Proceedings were started to dismiss a tenure teacher with 23 years' experience for unbecoming conduct arising out of charges that he committed acts of physical violence against a pupil. Pursuant to the tenure law, the local school board determined that if charges were true, the teacher's dismissal was warranted, and forwarded the charges to the commissioner of education. The commissioner held a hearing and determined that the acts charged sufficed to warrant dismissal, and referred the matter back to the school board for imposition of penalty. The local board then voted to discharge the teacher, although the board did not appear to have a transcript of the hearing held before the commissioner of education.

The teacher appealed the commissioner's determination to the state board of education, which affirmed the commissioner's finding that the teacher's conduct constituted conduct unbecoming a teacher, but concluded that there was insufficient evidence to determine if outright dismissal was warranted, or if a lesser penalty would have sufficed. The state board remanded the matter to the commissioner for a further hearing, particularly regarding whether the teacher's misconduct was provoked.

After further hearing, the commissioner found the testimony failed to disclose material provocation, but made no finding regarding adequacy of penalty. He upheld the local board's decision of dismissal and refused to substitute his judgment for that of the board since, in his opinion, the matter was within the board's discretion and was not unreasonable, arbitrary, or otherwise unlawful. The state board affirmed this decision and the teacher appealed to the court.

The court held that the evidence supported the finding that the teacher was guilty of conduct unbecoming a teacher which warranted disciplinary action. But the court held further that the commissioner erred in failing to render an independent decision regarding the penalty to be imposed on the teacher on the evidence before him and in permitting the local board to exercise this function.

The court said that the commissioner's decision to refer the matter back to the local board to decide whether to dismiss the teacher or to reduce his salary was based on his department's misinterpretation of a statute that no teacher might be appointed, transferred, or dismissed except by majority vote of the local board and that the tenure law contained no authorization for the commissioner to impose a penalty.

In the opinion of the court, the tenure law did not bear out such a narrow interpretation. On the contrary, it was the legislative intent to impose a duty on the commissioner to hear and decide the entire controversy, including the extent of penalty. To this end his powers were broad and sweeping, indicative of legislative intent to vest finality of decision on all aspects of the charges. Further, there was nothing in the statute to suggest that local boards were intended to retain any part of the jurisdiction previously exercised other than a preliminary review of the charge against a teacher. The main purpose of the tenure law was to eliminate the local board's simultaneous roles of investigator, prosecutor, and judge, to remove trial of cases from the publicity attendant on the local hearing which tears the community apart and disrupts orderly conduct of local school affairs.

The court further held that the commissioner erred in restricting his role to appellate review of whether the local board's decision after the hearing was clearly unreasonable, arbitrary, and illegal. This restricted interpretation resulted in prejudice to the teacher, and required the matter to be remanded to the commissioner. The teacher was entitled to an independent determination by the commissioner of the scope of the penalty based on all the evidence against him.

As to the evidence, it was shown that a male pupil in the teacher's classroom came into unauthorized possession of a girl's pocketbook during some horseplay. The teacher "laid hands" on the pupil at least twice and "tackled" him as the boy tried to leave the room. While the court held no brief for the teacher's conduct and did not doubt that a single flagrant incident may show unfitness to teach, there was no indication in the record, the court said, that the teacher's acts were premeditated, cruel, vicious, or done with intent to punish or inflict corporal punishment. Rather, the acts bespoke a "hasty and misguided effort to restrain the pupil in order to maintain discipline." Although such conduct warrants disciplinary action, forfeiture of the tenure teacher's rights, including jeopardy of his retirement rights, in the court's view, was and unduly harsh penalty to be imposed under the circumstances.

Therefore, the court remanded the case to the commissioner to decide the proper penalty to be imposed based on his findings as to the gravity of the offenses, taking into consideration evidence of provocation, extenuation, or aggravation, and taking into consideration any harm the teacher's conduct may have had on the maintenance of discipline and proper administration of the school system.

New Mexico

Board of Education, Penasco Independent School District No. 4 v. Rodriguez
422 P. (2d) 351
Supreme Court of New Mexico, December 6, 1966; rehearing denied, January 19, 1967.

A school superintendent was given notice by the school board of the termination of his services as a superintendent and of his employment as a teacher. On his appeal, the state board of education reversed the action of the local school board. The local board gave notice to the district court of its appeal from the state board decision. The district court, in turn, reversed the order of the state board of education. An appeal followed.

The question before the appellate court was whether the appeal by the local board 84 days after the state board issued its order was timely. The statute did not set out the time within which such an appeal must be taken. In view of existing court rules that appeals must be perfected in 30 days, the appellate court held that the district court was without jurisdiction to hear or determine the appeal from the state board of education. Accordingly, the district court was directed to vacate the judgment and dismiss the appeal of the local school board.

Brown v. Romero
425 P. (2d) 310
Supreme Court of New Mexico, March 20, 1967.

A teacher who had a teaching contract for the 1961-62 school year was given no notice of termination prior to the end of the school year. She asserted that upon the failure to give such notice, her teaching contract was automatically renewed. The teacher alleged that her request for a hearing before the school board was denied on the ground that she did not have the required tenure to be entitled to a hearing, and that her appeal to the state board of education was dismissed without a hearing.

The teacher sought damages for breach of claimed tenure rights, or in the alternative, for an award of an additional year's salary because of a claimed statutory extension of her teaching contract.

The board of education argued that the court lacked jurisdiction because the pleading revealed on its face that the teacher failed to exhaust her administrative remedies. The trial court dismissed the teacher's complaint with prejudice.

On appeal the court found that the teacher had not exhausted her administrative remedies since a hearing before the school board had not been held. Under the law, an appeal to the state board could not be made until after a hearing by the local school board. An appeal to the court may be taken only from an adverse decision of the state board of education. In the present case, mandamus was available to the teacher to test her right to a hearing before the school board. But since the teacher failed to bring a mandamus proceeding, she failed to pursue to and exhaust her statutory remedies, and consequently the order dismissing her complaint was proper.

As to the issue of damages for alleged breach of the 1961-62 contract, or in the alternative, for an additional year's salary under the terms of the existing contract, the court held that these claims must be advanced in a court of original jurisdiction, and not in the course of an appeal from the decision of an administrative agency.

The case was remanded with the direction to dismiss the appeal, but without prejudice.

Roberson v. Board of Education of City of Santa Fe
430 P. (2d) 868
Supreme Court of New Mexico, July 24, 1967.

A teacher was dismissed from the position she held for 20 years after a hearing before the city board of education. An appeal followed to the state board of education whose decision by statute is declared to be final. The state board upheld the action of the city board, and the teacher filed a "Notice of Appeal" in court, charging that the decisions of both boards were "wholly arbitrary, unlawful, unreasonable, and capricious." The lower court issued a writ of certiorari. Thereafter, the boards of education filed motions to quash the writ and to dismiss the proceeding on the grounds that the notice of appeal could confer no jurisdiction upon the court since by law the decision of the state board was final, and that certiorari could issue only upon proper petition. The motions were sustained, and appeal was taken to the higher court. Approximately 15 months after the decision of the state board of education, the state supreme court affirmed the action of the lower court. Within 19 days thereafter, the teacher filed a petition for the issuance of a writ of certiorari as a continuation of the cause initially filed as a "notice of appeal." Both boards again filed motions to quash, which were sustained by the lower court on the ground that the petition for a writ of certiorari was not, as alleged, a continuation of the cause filed under the earlier "notice of appeal" since that notice of appeal was held not to be a "petition, declaration, bill, or affidavit" upon which process "was authorized to be issued." Therefore, the teacher was "negligent and barred by laches because of her failure to proceed properly to obtain a review by certiorari."

The court overruled the decision that certiorari was barred by laches in this case since the delay by the teacher in perfecting a petition for a writ of certiorari until final decision on the notice of appeal was decided upon was in good faith and with no purpose to delay. Delay could not conceivably benefit the teacher who was seeking reinstatment.

Also, the court observed that it could see no change of position or prejudice to the boards because of the passage of time. Therefore, the court in its discretion disallowed the claim of laches.

New York

Agresti v. Buscemi
281 N.Y.S. (2d) 853
Supreme Court of New York, Appellate Division, July 10, 1967.

(See Teacher's Day in Court: Review of 1966, p. 27.)

A teacher who had been a probationary principal for two years and who was granted a sabbatical leave for her third year, sued for a court order establishing that she had obtained tenure as an elementary-school principal. The lower court ruled that in the circumstances of the case, the school board was estopped in denying her tenure as an elementary-school principal.

The judgment was reversed on appeal on the ground that there were issues raised in the teacher's proceeding which should not have been decided by affidavits. "The knowledge and understanding of the [teacher] of the status of her probationary appointment as elementary school principal and assistant principal during her sabbatical leave are relevant and material to the issue of whether she can claim tenure by acquiescence and estoppel." Also, the nature of the services and duties performed and the board-approved graduate studies pursued by the teacher are relevant in determining whether they can be deemed service in the position of elementary-school principal and assistant principal. The court held that these factual matters should only be determined after a trial.

Baron v. Mackreth
276 N.Y.S. (2d) 553
Supreme Court of New York, Appellate Division, Second Department, January 16, 1967.

A teacher of driver education who was dismissed brought court proceedings for reinstatement.

His petition was dismissed on grounds of delay in seeking a remedy. In the court's opinion, the record did not contain a showing sufficient to sustain the school board defense of laches, and a hearing was required to determine whether the teacher's delay in demanding reinstatement was reasonable, excusable, or prejudicial to the rights of the school board or other persons.

The court said the hearing should also explore whether the driver education course was, in fact, dropped as an accredited course. If it was, inquiry should be made as to whether it was subsequently restored to the curriculum and, if it was not restored, whether it was dropped in good faith, or to circumvent the teacher's tenure rights. This inquiry is necessary, the court said, because the teacher may be entitled to reinstatement if the defense of laches is not established.

Board of Education of the City School District of the City of Poughkeepsie v. Allen
227 N.Y.S. (2d) 204
Supreme Court of New York, Special Term, Albany County, February 14, 1967.

The teacher was appointed on September 1, 1958, and served until the end of the school year in June 1960. In March 1960, she requested a maternity leave of absence and asked for substitute teaching work, commencing February 1961. She was advised that maternity leave was granted only to tenure teachers and that her name would be placed on the list of substitute teachers when her child was a year old. She was also advised that her resignation was accepted. After her child was born, she was employed briefly as a substitute teacher in 1962 and was re-employed as a full-time teacher, purportedly on a probationary basis from September 1962 to June 1965. Before the end of the third year (1965), she was notified that she would not be recommended for tenure.

The teacher appealed to the state commissioner of education who set aside the board's determination, finding that the teacher did not submit her resignation, nor did she intend to resign in 1960; and that there never was a legal termination of her services since the board did not comply with the Education Law which provides that a teacher's probationary period may not exceed three years and her services may be discontinued only during such period on recommendation of the school superintendent by a majority vote of the board of education. Consequently, the teacher actually had five years of service and had acquired tenure by acquiescence of the board. Also, that the teacher was entitled to maternity leave as a matter of law, whether on probation or tenure, and denying maternity leave is void as against public policy.

The school board sought to annul the commissioner's determination, charging that it was affected by an error of law, and was, therefore, arbitrary and capricious.

The court pointed out that the commissioner's decision in educational matters is final and not subject to judicial review unless purely arbitrary, and that in making a policy judgment, the commissioner may substitute his judgment for that of a local board even where the board's decision was not arbitrary. The court said that while the school board is authorized by statute to adopt rules and regulations for granting leaves of absence, a bylaw so adopted is void and of no effect if, as in this instance, it contravenes the established public policy that a teacher is entitled to a maternity leave of absence and could not be dismissed because of pregnancy.

Under the circumstances here presented, the court concluded that the commissioner did not act arbitrarily in determining that the board failed to comply with the tenure statute, and therefore, the teacher had acquired tenure by acquiescence.

The board claimed also that the teacher was guilty of laches in failing to appeal to the commissioner until 1965 from the denial of her maternity leave and in accepting her request for this leave as a resignation. As to this claim, the court said that since the commissioner had found that the teacher had acquired tenure by reason of her continued employment after an ineffectual attempt to terminate her services, her rights were not adversely affected and hence, she had no legal cause for complaint until her services were terminated at the end of the 1965 school year.

Since the commissioner's decision was on a matter of purely educational concern and was not arbitrary, the court held it must be accorded finality. Accordingly, the board's petition was dismissed.

Cedar v. Commissioner of Education
279 N.Y.S. (2d) 661
Supreme Court of New York, Special Term, Albany County, May 8, 1967.

A former teacher in the Central School District No. 2, Town of Oyster Bay, Syosset, New York, sought to have an agreement between him and the school board declared illegal and void and also for a continuation of hearings previously commenced before the board.

Charges had been filed against the teacher based upon neglect of duty, and a formal hearing was commenced pursuant to the teacher tenure law. After seven days of hearings and before the eighth session was to begin, an agreement was reached between the attorneys for the teacher and the board which both parties approved. The agreement as finally executed called for the board to pay the teacher $4,500 in return for a general release and the teacher's resignation.

This case arose only after the teacher had encountered difficulty in obtaining a new teaching position without a recommendation from his last employing superintendent. The board refused his tender of the money it had paid him.

On an appeal to the commissioner of education, the teacher claimed that the payment to him of public monies under the terms of the agreement and without services rendered was a gift and, therefore, in violation of the state constitution. He further charged that he was deprived of his right as a tenure teacher to have a determination of the charges against him after a hearing in accordance with the tenure law. The commissioner of education determined the agreement to be legal as a properly negotiated settlement of a quasi-judicial proceeding.

On appeal to the court, the teacher's petition was dismissed. The court declared that it could intervene only in the event the commissioner's decision was affected by an error of law. In this instance, there was no showing of illegality or arbitrariness in the commissioner's decision. Moreover, the court found that the teacher was not deprived of his right to a hearing since it was his voluntary resignation which terminated the proceedings.

As to the right of the board of negotiate a [illegible] expensive litigation and uncertain outcome, the court held that the money paid the teacher under the agreement "was a payment for a legitimate school purpose...and could not be construed as a gift of public monies without services rendered."

Rosen v. Board of Higher Education of the City of New York
275 N.Y.S. (2d) 694
Supreme Court of New York, Appellate Division, First Department, December 20, 1966.

The teacher was first appointed as a temporary teacher in the Hunter College High School in January 1963, on a monthly basis for the period September 10, 1962, to August 31, 1963. Thereafter, she was reappointed at an annual salary for three successive years through August 31, 1966. In November 1965, she was notified that she would not be re-employed for the 1966-67 school year.

The teacher brought suit, contending that she had acquired tenure; therefore, she could not be summarily discharged and was entitled to a hearing. The lower court granted the teacher's application for an order prohibiting the board of education from removing her from her position to the extent of remanding the matter for a formal hearing on the cause of the teacher's discharge.

The applicable tenure and bylaw provisions require that a teacher be employed on an annual salary basis and that the teacher have completed either four full years of continuous service, or three full-years and have been appointed for a fourth full year, in order to obtain tenure status.

The appellate court held the teacher had not acquired tenure in view of her first year of probationary employment on a monthly basis. Since the board action in not re-employing the teacher was in accord with the applicable tenure provisions, the court said, it was not permitted to substitute its judgment for that of the board. Accordingly, the judgment was reversed, and the teacher's petition dismissed.

Tessier v. Board of Education of Union Free School District No. 5, Town of Hempstead
278 N.Y.S. (2d) 871
Court of Appeals of New York, February 21, 1967.

(See Teacher's Day in Court: Review of 1965, p. 32.)

A teacher sought review of a school-board decision to terminate his employment. The teacher who had a "long, unblemished, and creditable record" was accused by two teen-age girls to having embraced and kissed one girl and proposed an evening date to another.

The lower appellate court affirmed the determination of the school board, but modified the punishment of dismissal and imposed a one-year suspension without pay. One judge dissented on the ground that the testimony of the two teen-age girls was doubtful, and in the light of the teacher's unblemished record, did not justify the dismissal or the majority court decision reducing the punishment.

The highest New York court reversed the lower court and the determination of the board of education on the basis of the dissenting opinion and remitted the matter to the board of education for further proceedings.

Ohio

State ex rel. Fox v. Board of Education, City of Springfield
229 N.E. (2d) 663
Court of Appeals of Ohio, Clark County, December 19, 1966.

A continuing contract teacher sought a court order requiring the board of education to employ her as a guidance counselor. For three years, 1960-1962, she had received and approved notices appointing her to the position of teacher at a stipulated salary and supplemental salary for additional duties as a part-time guidance counselor. During 1963 and 1964, she received and approved similar contract notices but had devoted full time to counseling duties. In 1965 she was offered and approved a contract notice which removed her counseling duties and returned her to classroom teaching. During 1965-66 she performed duties as a classroom teacher. The teacher claimed a legal right to resume her employment as a guidance counselor on the theory that while actually employed under a written "continuing contract" as a teacher, she had acquired a "limited contract status" as a guidance counselor.

The court denied the teacher's petition, holding that the teacher did not receive a vested right to perform exclusively as a guidance counselor under the terms of her written contract as a teacher. The court observed that the teacher "apparently envisions some categorical distinction between 'guidance counselors' and 'teachers' which is not discernible from applicable statutes." Guidance counselors receive "teaching certificates." During each year of tenure, the teacher had a written contract in accordance with statutory requirements. There never was a limited contract with the teacher for counseling duties. In the language of the court, the teacher "having accepted the benefits and protection afforded by the continuing contract, must be presumed to have waived her asserted right to any independent and preferential status, under the alleged unwritten contract."

Oregon

Ayers v. Lincoln County School District
432 P. (2d) 170
Supreme Court of Oregon, October 4, 1967.

In accordance with statutory requirements, the superintendent of schools by letter informed the teacher of his intention to recommend her dismissal to the school board and of her right to request a review of this recommendation by a panel of the Professional Review Committee.

The panel hearing held at the teacher's request, allowed the teacher and her counsel to present evidence and argument, but both were excluded from all other proceedings before the panel, and were not permitted to hear testimony or cross examine witnesses. In its report to the school board the panel found that the superintendent was justified in recommending the teacher's dismissal.

The teacher then requested and was granted a hearing before the school board, which included opportunity to present testimony and documentary evidence. Following the hearing, the board terminated her employment. The teacher appealed, contending that she should have been allowed a full hearing before the panel with the right to hear all testimony and, through her counsel, cross examine witnesses.

The tenure statute provides: "The permanent teacher involved shall have the right to meet with the panel accompanied by counsel or other person of his choice and to present any evidence and arguments which he considers pertinent to the considerations of the panel."

The trial court held the dismissal to be invalid.

On appeal by the school board, the judgment was affirmed. The court held that the legislature intended that the teacher's right to meet with the panel, includes the right to be present throughout the panel hearing, personally and with counsel, subpoena and cross examine witnesses, present other evidence and make arguments to the panel. Therefore, it was error for the panel to exclude the teacher and her attorney from the proceedings.

The court found that the statute referred to an "adversary" rather than an "auditory" type of hearing. The nature of the powers conferred upon the panel was one indication of the legislature's intent. The powers granted the panel in this case "are those usually associated with the exercise of a judicial function."

Rejecting the school-board claim that the panel proceedings are "investigatory" only, the court observed the argument would be more persuasive if the teacher were offered a later opportunity to test the basis of the panel's decision. However, there is no statutory guarantee of a later opportunity. No transcript of the panel proceedings is required. And while the board at its hearing must consider the panel report if it is unfavorable to the teacher, the board is not bound to, but may consider the panel report if favorable to the teacher. Noting that the panel report would be "obviously of more significance to the teacher when adverse," the court said that "unless the teacher has the right to participate fully in the proceedings before the panel, the teacher is effectively denied any opportunity to test the credibility and authenticity of the evidence which likely will be determinative of the ultimate result."

SCHOOL DESEGREGATION

(Note: In addition to the cases reported under this heading, there are a number of other 1967 court cases initiated by public-school pupils for school desegregation which contained issues on assignments of teaching staffs on a racial basis. The summaries of these cases are not included here because this report is limited to digests of cases in which teachers themselves are litigants. Those interested in this aspect of teacher assignment are referred to the school desegregation cases in The Pupil's Day in Court: Review of 1967, another NEA Research Division school law publication.)

Kansas

Londerholm v. Unified School District No. 500
430 P. (2d) 188
Supreme Court of Kansas, July 6, 1967.

In 1963, the attorney general of Kansas brought a proceeding under the Kansas antidiscrimination statute, charging the school board of Kansas City, Kansas, with discrimination against Negroes. The local chapter of the NAACP intervened as a complainant. Subsequently a group of teachers, individually and also on behalf of the local teachers association, intervened on the side of the school board.

In the initial hearing before the Commission on Civil Rights, the state attorney general charged that the school board had (a) refused to hire qualified Negro teaching applicants for positions in predominantly white schools; (b) discriminated against a Negro elementary supervisor in the assignment of office space and limited his work to predominantly Negro schools while his white counterparts were assigned to both white and Negro schools; (c) officially sanctioned separate, segregated teachers associations for elementary teachers and made membership in these segregated associations compulsory for the teachers; and (d) refused to transfer teachers over their objection, solely for the purpose of integrating the faculties.

Despite the recommendation of its own investigating officer that there was no probable cause for the third charge, the commission found against the school board on all four charges, and ordered the school board to take affirmative steps, including the nonvoluntary transfer or assignment of teachers, to eliminate discriminatory practices. The board was further ordered to inform the various teachers associations that it disapproved segregated teachers associations. The school board appealed, and the Kansas City Teachers Association intervened by class action on its side.

The trial court found that the state attorney general had not sustained his burden of proof as to the first three charges, and found as fact that the school board recognized only the Kansas City Teachers Association which was comprised of all tenure teachers, regardless of race. As to the fourth charge, the trial court held that transfer of a tenure teacher over his objection, solely because of his race or color, would violate his contractual and property rights; that the probationary teachers come within the state antidiscrimination statute and that transfer without their consent would be permissible.

The trial court sustained the motions for summary judgment by the school board and the teachers association as to tenure teachers, and the motions of the attorney general and the NAACP as to probationary teachers only. The complainants appealed that part of the decision ruling against them on their charge that the school board had refused to hire qualified Negro applicants for positions in predominantly white schools, and that part of the decision holding tenure teachers could not be transferred without their consent to effect integration. The school board and the intervening teachers appealed from that portion of the decision holding that probationary teachers could be transferred over their objection to effect integration.

The Kansas Supreme Court affirmed the order of the trial court in all respects except the portion concerning probationary teachers.

As to the charge that the board had refused to hire Negro teachers for predominantly white schools, the court found that since the decision in Downs v. Board of Education of Kansas City, 336 F. (2d) 988 (1964) holding that the board's over-all policy met constitutional requirements, the board "has taken positive and active steps toward integration of staff members of all schools.... Many Negro teachers were employed in predominantly white schools, and many white teachers were employed in predominantly Negro schools. The board not only hired for any vacancy in the system without regard to race, but it actually tried to employ Negro teachers for white schools and vice versa. The big stumbling block was in finding qualified Negro teachers."

The court rejected the argument that a presumption arose that employees were segregated on the basis of race by their showing a chart disclosing 35 schools with a teaching staff that was either all-white or all-Negro. The court concluded that the complainants failed to produce evidence to support the charge of discrimination in hiring.

Finally, on the issue of involuntary transfer of teachers to effect integration, the court referred to federal court decisions which have held that the Fourteenth Amendment does not require integration of the races in the public schools. In construing the Kansas antidiscrimination statute, the court declared that the statute "bars discrimination only and is not concerned with integration of the races." Therefore, if a school board does not discriminate against any individual in its hiring and employment practices, it has satisfied the admonition of the Kansas antidiscrimination statute and has no duty or obligation under the statute to take any affirmative steps to effect integration; nor is the school board compelled under the statute to transfer a teacher over his objection because of his race to a school other than the one he would be regularly assigned in order that the faculty may be better integrated.

The construction of the antidiscrimination statute was found not to be affected by the tenure status of teachers; and since the Kansas City teachers' contracts did not specify a particular school, there could be no justifiable distinction between rights of tenure and probationary teachers against involuntary transfer.

North Carolina

Wall v. Stanly County Board of Education
378 F. (2d) 275
United States Court of Appeals, Fourth Circuit,
May 19, 1967.

(See Teacher's Day in Court: Review of 1966, p. 32.)

In June 1965, the North Carolina board of education for the first time granted teacher spaces to the Stanly County Board of Education without reference to race, and without designating the schools in which the spaces might be used.

As a result of the freedom-of-choice plan adopted by the Stanly County board of education for the 1965-66 school year, over 300 Negro pupils who had formerly attended all-Negro schools were assigned to formerly white schools. The shift in enrollment brought about a decrease in the allocation of teacher spaces to the Negro schools and a resultant increase in the allocation of teacher spaces to formerly white schools. The board made no specific provisions regarding the assignment of teachers who might be affected by the pupil shifts under the freedom-of-choice plan. The board did not advise principals as to whether the teachers so affected would be reassigned, nor did it indicate to the principals that they could employ teachers without respect to race.

A Negro teacher of "unchallenged qualifications" who had 13 years of teaching experience, mostly in Stanly County, had been recommended by her principal for re-employment for 1965-66 school year; the school board approved contingent only upon the allocation of the requisite teaching positions by the state. When the shift in pupil enrollment decreased the allocation of teacher spaces in the Negro schools, this teacher was denied re-employment. Whereupon she brought an action for reinstatement to her previous teaching position and to recover damages for the alleged wrongful nonrenewal of her contract.

The trial court denied relief and an appeal was taken.

The appellate court reversed the lower court because the denial of relief to the Negro teacher was in derogation of the following firmly established principles in the Fourth Circuit: that the Fourteenth Amendment forbids the selection, retention, and assignment of public-school teachers on the basis of race; that reduction of students and faculty in a formerly all-Negro school will not alone justify the discharge or failure to re-employ Negro teachers in a school system; that the teachers displaced from formerly racially homogeneous schools must be judged by definite objective standards with all other teachers in the school system for continued employment; and that a teacher wrongfully discharged or denied re-employment contrary to these principles, is, in addition to equitable remedies, entitled to an award of actual damages.

Since the teacher in this case had been recommended for re-employment and the recommendation was approved by the board--subject only to the allotment of spaces, which was controlled by the same board--the court held that "the belated and invidiously unfair rejection of her application for re-employment entitles her to recover damages." In the view of the court, the board considered the transfer of Negro pupils from formerly Negro schools to formerly all-white schools diminished the need for Negro teachers in the Negro school causing the plaintiff-teacher to lose her job. "The premise of such a proposition," the court said, "is that Mrs. Wall was not employed as a teacher in the Stanly County school system but was employed as a Negro teacher in a Negro school. Such a premise is unlawful. It is repugnant to the Fourteenth Amendment which 'forbids discrimination on account of race by a public school system with respect to employment of teachers.'"

A reversal of the decision was required, the court said, because the teacher "was not allowed to compete for a teaching position in the system on the basis of her merit and qualifications as a teacher." Solely because of her race, her qualifications were not considered objectively and in comparison with other teacher applicants, about 50 of whom had not previously taught in the school system. This sort of invidious discrimination offends the Constitution.

The court instructed the lower court to order the board to place the teacher on the roster of teaching applicants for the school year 1967-68, if she wishes, and to require that she be considered objectively with all teachers; and to order the board to consider her 12 years of experience with the Stanly school system to the extent that it considers seniority as a factor in the retention of other teachers. Consideration of race as a factor in re-employment was to be specifically enjoined. If the teacher should be denied re-employment by the board, the court was further instructed to require a full report of the reasons for denial and to "scrutinize it to assure that the school board has acted in good faith and without regard to race."

As to money damages the teacher was entitled to recover, the court stated that the proper elements would include salary differences, if any, during her employment elsewhere, her moving expenses to her new residence, and the reasonable cost of moving back to Stanly County should she be re-employed there in the 1967-68 school year.

The court noted that in April 1966 the school board had adopted an extremely comprehensive plan for teacher recruitment and assignment which was adequate on its face, and if implemented in good faith, would meet constitutional standards. The trial court was instructed on remand to make further inquiry into the implementation of this teacher recruitment and assignment plan and to consider de novo the question of whether or not an injunction might issue to assure the plan was being and would continue to be implemented according to its tenor that teachers are to be hired and assigned without racial discrimination, and to assure fair and equal treatment to all teachers in the system.

TEACHER/SCHOOL-BOARD NEGOTIATION

California

Berkeley Teachers Association v. Berkeley Federation of Teachers
62 Cal. Rptr. 515
Court of Appeal, First District, Division 2, California, September 25, 1967.
Hearing denied, Supreme Court of California, November 22, 1967.

This is an appeal from a judgment enjoining the Berkeley board of education from holding an election among its certificated teachers. The action for the injunction and other relief was brought by the Berkeley Teachers Association (NEA) against the school board and the school superintendent. The Berkeley Federation of Teachers (AFL-CIO) and its president intervened in opposition.

According to the undisputed facts, in October 1965 the school board adopted a resolution pursuant to the Winton Act (the 1965 negotiation law for public-school employees), establishing a negotiating council of nine members "allotted proportionately according to an election of the certificated staff, to represent organizations of certificated staff members in negotiations...." All certificated employees, whether or not members of an employee organization, could participate in the election.

The teachers association alleged that the election procedure violated the Winton Act. Section 13085 of this act provides that the public-school employer shall meet and confer with representatives of employee organizations upon request with regard to all matters relating to employment conditions and employer-employee relations, and also with employee representatives of certificated employees upon request with regard to all matters relating to the definition of educational objectives. Where there is more than one employee organization representing certificated employees, the public-school employer shall meet and confer with the representatives of such employee organizations through a negotiating council with regard to all matters specified in the section. Membership on this council is to be not less than five nor more than nine representatives of those employee organizations entitled to representation thereon. Each such organization is entitled to appoint members to the negotiating council in the same proportion as the number of its membership bears to the total number of certificated employees who are members of employee organizations representing certificated employees. Section 13087 requires the public-school employer to adopt reasonable rules and regulations for the administration of the Winton Act, including provisions for verification of the number of certificated employees who are members in good standing of the employee organization, and for the size of the negotiating council where one is required.

The lower court concluded that the proportional allotment of the nine members to the negotiating council by means of an election by all certificated employees in the Berkeley school district was contrary to the express provisions of Section 13085 of the Winton Act that the members of the negotiating council be selected by the employee organizations representing certificated employees.

On appeal, the teachers union argued without success that the election procedure was a proper and reasonable method and authorized by Section 13087, and necessitated by the fact that the legislature had not defined "members" and "members in good standing" as used in that section with respect to representation.

The appellate court affirmed the judgment granting the injunction against proceeding with the election as contrary to the provisions of the Winton Act. In so holding, the court said that the statute does not provide for a negotiating council to represent all certificated employees in the school district, but for a council composed of representatives of those employee organizations entitled to be represented on the council; that the members of the council are to be appointed according to a proportionate allotment under a statutory formula which does not take into account all the certificated employees in a school district but which sets the proportion as nearly as practicable at the ratio which the certificated employee membership of each of the respective organizations bears to the total certificated membership of all such organizations.

Furthermore, an election is not the procedure contemplated in Section 13087 for determining which of the certificated employees of a school district are members of one or more employee organizations. The procedure contemplated is merely one of ascertainment and verification, and an election is an inappropriate procedure for this purpose under the Winton Act. While the act did not define the word "member" as applied to an "employee organization" representing certificated employees, a reading of the statute as a whole, the court stated, indicates that "member," used in its normal sense, means a certificated employee who joins an employee organization representing certificated employees, and the statute does not allow the interpretation of "member" as advocated by the teachers union which would permit organizational membership to be determined by preference or choice of all certificated employees whether or not the voting employees are "members in good standing" of the organization.

Also rejected by the court was the contention of the teachers union that the verification of membership provisions of Section 13087 creates an ambiguity because dual membership of many certificated employees makes such verification meaningless. The court said that the proportional formula for the appointment of members to the negotiating council adequately takes care of plural membership problems.

Taking into consideration the legislative history of the Winton Act, including rejection of proposed amendments to delete the representational negotiating council and to insert provisions for election by secret ballot of members to the negotiating council, the court concluded that the legislature intended to bar representational elections from the field of public-school employment and expressly rejected the collective bargaining approach of a single employee organization to represent all certificated employees.

The court concluded that the election envisioned in the school board's resolution was contrary to and in conflict with the clear provisions of the Winton Act. Since the school board had no authority to pass a rule or regulation to alter the terms of the act, the granting of the injunction requested by the teachers association was proper.

Illinois

Chicago Division of Illinois Education Association v. Board of Education of City of Chicago; Broman v. Board of Education of City of Chicago
222 N.E. (2d) 243
Appellate Court of Illinois, First District, First Division, November 9, 1966.

Since 1964, the Chicago school board had recognized the Chicago Division of the Illinois Education Association (IEA), the Chicago Teachers Union (CTU), and the Chicago Principals Club as collective bargaining agents for their teacher members and other professional personnel who desired one of these organizations to speak for them. With the school board's approval, the school superintendent in 1964 entered into a "Memorandum of Understanding" which prescribed procedures for the resolution of professional problems and grievances with each of these organizations.

The Chicago Division of the Illinois Education Association and a taxpayer in behalf of himself and other taxpayers brought the suit for a declaratory judgment to have this memorandum determined to be a valid and subsisting contract to remain in effect at least until November 12, 1966; and to restrain the school board from proceeding to prepare and conduct an election to determine which organization should be the sole collective bargaining representative for teachers and school personnel, until the court could hold a hearing on the matter. An injunction was sought to restrain the school board from recognizing the CTU or any organization as the sole bargaining agent of its employees "upon any question upon which power of decision has been entrusted to the said Board of Education by the Illinois State Legislature."

The CTU intervened in the action as a defendant and moved, as did the school board, to dismiss the complaints. The trial court granted this motion, subject to certain limitations. It decreed that a school-board resolution authorizing the Chicago teachers to hold a referendum election to select a bargaining agent concerning wages, working conditions, and other professional problems, and providing that employees may join any organization they choose and that persons not members of the elected organization, have the right as individuals to present grievances and make suggestions to the board, was not an unlawful delegation or the sharing of the board's legislatively delegated powers. However, before this resolution could be put into effect, notice had to be given to all parties to terminate the memorandum of understanding. The decree also provided that any collective bargaining agreement made must contain a no-strike clause, and provide that should negotiation fail to resolve differences, the decision of the school board shall be final. A further limitation in the decree prohibited the board from entering into any collective bargaining agreement under which it would "abdicate or bargain away its continuing legislative discretion."

Subsequent to the entry of the decree, the school board gave written notice to terminate the Memorandum of Understanding and authorized a referendum election to be held.

The central question raised on this appeal by the taxpayer was whether, in the absence of express statute, the Chicago school board had authority to engage in collective bargaining and enter into a collective bargaining agreement with an exclusive representative of its employees. The school board contended that specific legislation is unnecessary and that existing legislation is more than sufficient to authorize exclusive collective bargaining by the board.

The appellate court concluded that the Chicago school board "does not require legislative authority to enter into a collective bargaining agreement with a sole collective bargaining agency selected by its teachers" and held that such an agreement is not against public policy. Consequently, the trial court order striking the complaints was proper.

Michigan

School District for the City of Holland, Ottawa, and Allegan Counties v. Holland Education Association
152 N.W. (2d) 572
Court of Appeals of Michigan, September 9, 1967.

The school board sought injunctive relief against a claimed strike in the concerted failure of teachers to report for duty and their willful absence from the "full, faithful, and proper performance of their duties of employment for the purpose of inducing, influencing or coercing a change in the condition, or compensation, or the rights, privileges or obligations of employment."

The trial court issued a temporary restraining order. The teachers and the local education association then sought and obtained an emergency appeal and a stay of proceedings until a hearing was had. The teachers maintained that they were not public employees at the time the action arose since they did not have individual written contracts as required by law. They also insisted that the statute denying them the right to strike was unconstitutional and that the law allowing the school board to discipline strikers and the review procedure therefrom was the board's proper remedy.

The appellate court affirmed the action of the trial court, denied a motion for a further stay of proceedings and remanded the case to the lower court for final action. Contrary to the teachers' argument, the court found the teachers to be public employees under the public employees relation act even though they had not yet commenced work for the fall and did not have individual written contracts. The court noted that the teachers had rights under that law between school years to call on the mediation services of the Michigan Labor Mediation Board, to bargain with the school board through their representatives, "and to invoke unfair labor machinery."

Also rejected by the court were the contentions of unconstitutionality of the antistrike law as applied to teachers.

On the issue of the board's proper remedy, the court declared that the statute allowing the board to discipline strikers does not "imply removing the historic power of the courts to enjoin strikes by public employees."

The teachers were found to be on strike because they were "abstaining in whole or in part from performing their duties for purposes proscribed by law." Accordingly, the court held that issuance of the restraining order was a proper exercise of the circuit court's power to prevent the teachers from striking and was not an abuse of discretion.

Note: On further appeal, the Michigan Supreme Court upheld the constitutionality of the anti-strike statute, and ruled that the teachers were public employees and subject to the no-strike provisions at the time they withheld their services even though they did not then hold signed employment contracts. However, the court held that the mere showing of concerted prohibited action by public employees did not ipso facto justify injunctive relief. While the trial court has discretion in granting or withholding injunctive relief, there was lack of proof in this case to support the issuance of a temporary injunction. Therefore, the temporary injunction was ordered dissolved and the case was remanded for an inquiry as to whether the school board had refused to bargain in good faith, as the teachers claimed, whether an injunction should issue at all, and if so, at what terms and for how long. (152 N. W. (2d) 206, April 1, 1968.)

Minnesota

Minneapolis Federation of Teachers Local No. 59 v. Obermeyer
147 N. W. (2d) 358
Supreme Court of Minnesota, December 9, 1966.

(See Teacher's Day in Court: Review of 1966, p. 54.)

In 1965, Minnesota enacted into law Chapter 839 which amended and added new provisions to the Public Employees Labor Relations Act, which governs the representation and collective bargaining rights of public employees. Public-school teachers were specifically excepted from this legislation for the reason that the 1965 legislature intended concurrently to make special provisions for teachers with respect to representation and organization rights and for settlement of disputes between teachers and school boards. A bill was passed but was vetoed by the governor.

The Minneapolis Federation of Teachers, an AFL-CIO affiliate, brought an action claiming the section in Chapter 839 excluding teachers to be unconstitutional, and sought an injunction requiring the labor conciliator to specify a representative unit for negotiation with the school board. The school board also brought an action to secure a declaratory judgment fixing the rights and obligations of the parties affected by the act. The Minneapolis Education Association, affiliated with the Minnesota Education Association and the National Education Association, was joined as a defendant in both actions. The trial court held that the challenged section was unconstitutional as an unreasonable and arbitrary classification of teachers, and concluded that in spite of the legislative intent, the governor's veto fortuitously brought the teachers within the Public Employees Labor Relations Act. On appeal, this decision was reversed.

The Minnesota Supreme Court held that the exception of teachers from the provisions of the Public Employees Labor Relations Act was not unconstitutional as an unreasonable and arbitrary classification denying teachers equal protection under provisions of the federal and state constitutions. The court noted that the Minnesota legislature has historically treated public-school teachers as a distinct classification in numerous statutes and that this historic recognition is sufficient to support the validity of the distinction made in the Public Employees Labor Relations Act.

The court held further that the 1965 law which revised former provisions of the Public Employees Labor Relations Act did not add or detract from the prior rights of teachers as they relate to the right to strike or to join labor or other organizations. But even in the absence of statute, there is no authority which gives a public employee a right to strike, nor is there a prohibition against the right of teachers to join unions or associations organized to promote their mutual interest.

Another issue before the court was whether a school board has implied power to conduct an election and bargain with the elected representatives of teacher organizations. The court held that in the absence of a statute applicable to teachers, there is no authority, express or implied, which gives school boards the right to hold an election for the purpose of designating an exclusive representative of teachers to negotiate with school boards with respect to wages, hours, and working conditions. But even without express statutory authority, there is nothing to prevent collective bargaining when it is entered into voluntarily or to prevent a school board from meeting with representatives of the teacher groups in the school district.

New Jersey

Board of Education, Borough of Union Beach v. New Jersey Education Association
233 A. (2d) 84
Superior Court of New Jersey, Chancery Division, August 4, 1967.

The school board sought a declaratory judgment that certain actions of the Union Beach Teachers Association, the New Jersey Education Association, and the National Education Association are illegal and in violation of the New Jersey Constitution. The board also asked for a mandatory injunction requiring these associations to take immediate steps to withdraw the actions they took threatening the imposition of charges of breach of ethics or other action against persons who seek employment in the school system.

The facts revealed that there was a dispute between the secretary of the school board and the president of the local teachers association (a nontenure teacher) concerning the mailing of certain information to voters prior to resubmission of the budget to the voters. The school board thereafter did not offer teaching contracts for 1967-68 to the president of the local association and several others of its active members. The local association met and passed a resolution about intolerable conditions in the school system, outlining numerous grievances. Subsequently 36 of the 47 teachers in the system presented their resignations effective some 18 days before the end of the school year together with a list of grievances. Sanctions were invoked by the local association, an action that was later backed by the state and national education associations. The state education association advised surrounding state colleges and all sectors of the teaching profession that its action was "the result of declining educational conditions in Union Beach and the school board's arrogance, ineptitude, neglect and arbitrary reprisals against teachers," and that Union Beach was an unfit place to teach. Violation of the sanctions could lead to censure or expulsion of a member from the teachers association or denial of membership to teachers.

The court issued the injunction and held that the actions taken by the teachers associations constituted a coercive activity designed for the sole purpose of compelling the school board to act in accordance with their desires, and as such, was in violation of Article 1, par. 19, of the New Jersey Constitution, as interpreted by the state's supreme court.

The court rejected the argument of the teachers association that their actions were protected by the First Amendment, saying that "we are not dealing with freedom of speech but rather with expression and threatening action to accomplish a purpose proscribed by the public policy of the State of New Jersey." The court said that if it were to accept the explanation of the teachers associations as to the cause of the resignations and the imposition of sanctions, its actions would still be illegal, since the employees do not have the right to engage in collective bargaining. And if they have a grievance arising under the school laws, they should have proceeded in accordance with the grievance procedure that was in effect in the school system, and if the procedure was not effective, there was recourse to the commissioner of education for appropriate relief.

Also rejected by the court was the contention that the injunction should not have been issued because no irreparable harm had been shown. The court said that the purpose of the sanction action was to make it impossible for the board to employ teachers in the school system, and irreparable injury would have been suffered by the board had the preliminary injunction not have been issued.

Despite the allegations of the NJEA and the NEA that as associations they had the right to discipline their members and this is all they would be doing if they censure or expel members, the court found their actions to be illegal as repugnant to public policy.

In issuing the injunction against the sanctions, the court stated that there was no intention to restrain the teachers association from exercising the right of free speech concerning what they think the conditions are in the Union Beach school system.

Wisconsin

Muskego-Norway Consolidated Schools Joint District No. 9 v. Wisconsin Employment Relations Board
151 N.W. (2d) 617
Supreme Court of Wisconsin, June 30, 1967.

In their complaint before the Wisconsin Employment Relations Board a group of teachers alleged that the school district engaged in unfair labor practice by interfering with their organizational rights. The teachers complained (a) that the school district coerced them into joining the Wisconsin Education Association, the Muskego-Norway Education Association (MNEA), or the Wisconsin Federation of Teachers Union by threatening loss of salary to any teacher taking off the two days of the annual teachers' convention who was not a member of any convening labor organization, and (b) that the school district refused to renew the teaching contract of Koeller, chairman of the MNEA Welfare Committee because of his MNEA activities.

The school district presented evidence to show that the MNEA officer was dismissed for shortcomings in teaching methods and for differences with certain policies of the school board and supervisory personnel. The teachers contended that hostility of the supervisory personnel to the increased labor activity under the leadership of Koeller prompted the refusal to renew his contract.

Upon hearing the complaint, the WERB found that Koeller was released primarily because of his MNEA activities as the collective bargaining representative of the teachers and ordered the school district to offer him his former position with compensation for damages. Evidence revealed that the dismissal came on the heels of a concentrated effort for united contract negotiation for all teachers under the direction of Koeller.

The trial court set aside the WERB decision, stating that the determination that Koeller was dismissed for labor activities was "based on speculation and conjecture," and held that if a valid reason for discharging an employee exists, then this alone is a sufficient basis for holding that the employee was not dismissed for union activities.

In rejecting the trial court's finding, the Wisconsin Supreme Court concluded that the WERB's order to the school district to offer reinstatement of Koeller was not based upon conjecture but upon reasonable inferences supported by substantial evidence that the motivation for the failure to renew his contract was his MNEA activities and was not on account of any shortcomings as a teacher or upon his differences with certain policies of the school board or supervisory personnel. The court cited with approval recent case law holding that so long as union activity is a motivating factor in the dismissal of an employee, the dismissal is unlawful, and it matters not that the employer also had ample valid reasons for dismissal.

On the issue over the teachers' convention, the school district relied on statutes providing that a school board may, without deducting wages, give the full time or any part thereof to a teacher who files sufficient proof of actual attendance at the convention session, and that "the days on which state and county teachers' conventions are held are considered to be school days." The school district interpreted these statutes to mean that only those who attend are eligible for pay. The teachers contended that threats by the school district of forfeiture of two days' pay upon failure to attend a teachers' convention constituted interference with the teacher's rights guaranteed by statute to freely "affiliate with labor organizations of their own choosing and...to refrain from any and all such activities."

The WERB agreed with the teachers that the conduct of the school district constituted interference with their organizational rights and issued a cease and desist order. The trial court set aside the WERB decision, declaring that state law requires the schools to be closed on teachers' convention days and authorizes time off with pay for teachers only if they attend the convention.

The Wisconsin Supreme Court reversed the trial court and affirmed the WERB's finding of coercion and intimidation on the part of the school district supervisory personnel as revealed in school district policy memos. In observing that the statutes relied upon by the school district and the teachers are not inconsistent when construed together, the court declared that "teachers cannot be required to attend such conventions under threat of loss of pay, but...teachers who do not attend such conventions can be required to work for the school. In this way teachers can avoid deductions from their salaries while the right to refuse to join labor organization guaranteed by Section 111.70(2) is preserved." The court also stated that deductions from a teacher's salary could be made only after the teacher not attending conventions has refused the offered school work.

LOYALTY

Colorado

Gallagher v. Smiley
270 F. Supp. 87
United States District Court, District of Colorado, April 24, 1967.
Appeal filed in Supreme Court of the United States, March 4, 1968, 36 Law Week 3358.

A teacher sought to enjoin the enforcement of a Colorado statute which requires that any teacher employed to teach at a university within the state must take the loyalty oath set forth in the statute. The statute further provided that any person in charge of a university who permits a teacher to teach without taking the oath shall be guilty of a misdemeanor.

The authorities at the University of Colorado demanded that the teacher execute an oath in the proper form as a condition precedent to continuing to discharge his teaching duties. When the teacher refused to take the oath, he was notified in writing to discontinue teaching.

Before the issue was brought before the court, the Regents of the University adopted by resolution a form of loyalty oath different from that required by the statute. Thereafter, the regents and officers of the University moved to dismiss the action on the ground the controversy was moot since the regents no longer required the teacher to comply with the statutory oath.

The court held that the case was not moot "as there is no assurance that the Board of Regents will not at some time in the future require the plaintiff to take the oath prescribed by the statute."

The court concluded as a matter of law that the contested loyalty oath, when construed in the light of Baggett V. Bullitt, 377 U.S. 360 (1964), is violative of due process because the oath is "unduly vague, uncertain and broad."

A permanent injunction was granted against the use of the oath set forth in the statute, and interference with the continuation by the teacher of his duties as a university teacher because of his failure to take the oath.

An appeal has been filed in the Supreme Court of the United States.

Maryland

Whitehill v. Elkins
88 S. Ct. 184
Supreme Court of the United States,
November 6, 1967.

The teacher was denied a teaching position in the University of Maryland because he refused to sign an oath certifying that he was not engaged "in one way or another" in an attempt to overthrow the Government of the United States and the state of Maryland, or any political subdivision, by force or violence, and further certifying that he understands that this disclaimer is subject to the penalty for perjury. A suit brought by the teacher to declare the oath unconstitutional was dismissed by a federal district court, and an appeal was accepted by the Supreme Court of the United States.

One question before the Court was whether the oath was to be read in isolation or in connection with Maryland subversive activities act, known as the Ober Act, which bars from public employment any person who is subversive or who is a member of a subversive organization. Sections 1 and 13 of the Ober Act define a subversive as "any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the State of Maryland, or any political subdivision of either of them, by revolution, force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this article."

The prescribed oath was prepared by the Maryland Attorney General and approved by the Board of Regents, the agency with exclusive management of the University of Maryland and which, it was conceded, had authority to provide the oath since the Ober Act directs every employing state agency to establish procedures to ascertain that an employee or appointee is not a subversive person.

The Court concluded that since the authority to prescribe oaths is provided in one section of the Ober Act, and since that section is tied to sections 1 and 13 defining subversives and subversive organizations, the challenged oath must be considered with reference to these sections.

In writing the oath, the Maryland Attorney General had adopted a narrower version of the term "subversive" in conformity with representations he had made in oral argument before the Supreme Court in an earlier case, Gerende v. Election Board (341 U.S. 56), wherein the statute's constitutionality was in issue. Although assuming by way of argument that the Attorney General and the Board of Regents were authorized to so construe sections 1 and 13 of the statute as to prescribe a narrow oath that excluded "alteration" of the government by peaceful "revolution" and that excluded all specific references to membership in subversive groups, the Court found the language was still beset with difficulties.

The Court held that the oath was an integral part of the Ober Act and as such was constitutionally defective because the lines between permissible and impermissible conduct in the alteration and membership clauses were indistinct.

In this regard, the Court said:

> Precision and clarity are not present. Rather we find an overbreadth that makes possible oppressive or capricious application as regimes change. That very threat, as we said in another context...may deter the flowering of academic freedom as much as successive suits for perjury.
>
> Like the other oath cases mentioned, we have another classic example of the need for "narrowly drawn" legislation...in this sensitive and important First Amendment area.

Massachusetts

Pedlosky v. Massachusetts Institute of Technology
224 N.E. (2d) 414
Supreme Judicial Court of Massachusetts, Middlesex, March 2, 1967.

A teacher brought this suit seeking a declaratory decree as to whether the teacher's loyalty oath statute violates the state and federal constitutions. The statute required every citizen of the United States who enters service as a professor, instructor, or teacher at any college, university, teachers' college, or private or public school in the state, to subscribe by oath or affirmation that (a) he will support the federal and state constitutions and that (b) he "will faithfully discharge the duties of the position...according to the best of my ability." Violation of the portion of the oath relating to support of the constitutions was punishable by fine.

The teacher refused to sign the oath and asked the court to enjoin the private university from discharging or refusing to hire him because of his refusal.

The court concluded that the portion of the oath requiring the teacher to affirm that he will faithfully discharge the duties of his position to the best of his ability was too vague a standard to enforce judicially. The opinion stated:

> To be sure, the criminal penalty does not attach to this portion of the oath, but the fact remains that the courts are exposed to the very real possibility of being asked to determine the degree of skill and faithfulness which the plaintiff discharges the duties of his private position in teaching mathematics and perhaps to compare that degree with that of the best of his ability. This evaluation process is altogether too vague a standard to enforce judicially. It is not a reasonable regulation in the public interest.

The court struck down the entire oath statute on the basis that it had no way of knowing whether the legislature would have enacted the statute without the invalid provision, and because the court was unable to decide that the provisions were separable.

New York

Keyishian v. The Board of Regents of the University of the State of New York
87 S. Ct. 675
United States Supreme Court, January 23, 1967.

(See Teacher's Day in Court: Review of 1966, p. 39.)

A New York statute disqualifies from public service and from employment in the educational system anyone who advocates the overthrow of government by force, violence, or any unlawful means, or publishes material advocating such overthrow or organizes or joins any society or group of persons advocating such doctrine. Another statute makes the utterance or any treasonable or seditious act grounds for dismissal from the public school system. Other statutes, the so-called Feinberg Law in particular, make Communist Party membership, as such, prima facie evidence of disqualification for teaching in the public school system. This law charged the Board of Regents with the duty to promulgate rules and regulations to implement the statutes. Accordingly, the Board of Regents drew up a list of "subversive" organizations after requisite notice and hearing. Membership in any of these organizations constituted prima facie evidence of disqualification to teach. In addition, each year the school authorities were required to determine whether an appointed employee was qualified for retention and to file a report of the findings.

This action was brought by individuals who were members of the faculty of the University of Buffalo when it was merged into the State University of New York in 1962. When the school became a state school, continued employment as faculty members was conditioned upon the signing by each of a certificate stating that he was not a Communist, and that if he had ever been a Communist, he had so informed the President of the State University of New York. The teachers challenged as unconstitutional the loyalty statutory sections and administrative regulations on grounds of vagueness, impinging on the First Amendment guarantee of freedom of speech, thought, and expression.

The Supreme Court of the United States in a 5 to 4 decision held the provisions to be unconstitutionally vague and in violation of the Fourteenth Amendment. The Court maintained that states could draft loyalty laws sufficiently definitive to eliminate controllable activities without deterring legitimate expression. However, the New York statutory definitions of "seditious" and "treasonable" were so vague that "no teacher can know just where the line is drawn between 'seditious' and nonseditious utterances and acts." The advocacy provisions were found to be particularly vague and thus susceptible to broad interpretation proscribing even harmless advocacy of abstract doctrine. The court, moreover, criticized the complicated, multi-statute machinery for enforcement and declared, "The very intricacy of the plan and the uncertainty as to the scope of its proscriptions make it a highly efficient in terrorem mechanism."

The Court also held as unconstitutional the New York statutes making Communist Party membership prima facie evidence of disqualification for teaching in the public schools. The statutes were impermissibly overbroad in that the legislation sanctioned mere knowing membership without any showing of specific intent to further the unlawful aims of the Communist Party. The Court did not adhere to its earlier decision, Adler v. Board of Education, 342 U.S. 485, (also involving the New York loyalty statutes) which upheld the premise that "public employment, including academic employment, may be conditioned upon the surrender of constitutional rights which could not be abridged by direct government action." Instead, the Court quoted with approval from the appellate decision in an earlier stage of the present case declaring, "The theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable has been uniformly rejected."

Knight v. Board of Regents of the University of the State of New York
269 F. Supp. 339
United States District Court, S.D. New York, June 2, 1967.
Judgment affirmed, Supreme Court of the United States, January 22, 1968, 88 S. Ct. 816.

A New York Statute (section 3002) requires every citizen teacher, instructor, or professor in any public school or any private school whose real property is exempt from taxation in whole or in part to execute an oath that he will support the federal and state constitutions, and will faithfully discharge the duties of his position according to the best of his ability.

Although this statutory requirement dates back to 1934, through inadvertence, faculty members of Adelphi College had not been asked to sign the oath until 1966, when the college was made aware of the statute. This action was brought against the State Board of Regents by 27 Adelphi College faculty members who had refused to sign the oath. They asked that the enforcement of the statute be enjoined, alleging violation of their federal constitutional rights.

One argument advanced by the teachers was that the statute was unconstitutionally vague, and in support of this contention relied on decisions of the Supreme Court of the United States which struck down for vagueness "negative loyalty oaths" or "non-Communist oaths." On this issue, the federal district court held that the challenged statute is clear and simple in its import and requires no more than that the subscriber affirm that he will support the constitutions of the United States and the State of New York, and that he will be a dedicated teacher. The court was not persuaded by the reasoning in Pedlosky v. Massachusetts Institute of Technology (see p. 46 of this report) where a similar oath statute with a requirement of professional dedication was voided. In the court's view, "a state can reasonably ask teachers in public or tax-exempt institutions to subscribe to professional competence and dedication."

While conceding that it was constitutionally permissible to demand of public officials an oath or affirmation of the type contained in the statute, the teachers suggested that different considerations apply to them in that teachers' speech must be totally "free of interference." The court answered:

> [W]e interpret the statute to impose no restrictions upon political or philosophical expressions by teachers in the State of New York. A state does not interfere with teachers by requiring them to support the governmental systems which shelter and nourish the institutions in which they teach, nor does it restrict its teachers by encouraging them to uphold the highest standards of their chosen profession.

The teachers appealed this decision to the Supreme Court of the United States. The Court in a summary action, granted the motion of the board of regents and affirmed the judgment of the lower court.

Oregon

Brush v. State Board of Higher Education
422 P. (2d) 268
Supreme Court of Oregon, In Banc,
December 30, 1966.

A teacher in a state-supported college brought a declaratory judgment proceeding challenging the constitutionality of a statute which required every teacher, as a condition of employment in the public schools, to subscribe to an oath to support the state constitution, to teach by precept and example respect for the flags of the United States and Oregon, reverence for law and order, and undivided allegiance to the government. The teacher had refused to sign the loyalty oath and was advised that she would receive no compensation until she filed the oath as required by the statute.

The lower court ruled the statute to be unconstitutional. The board of higher education appealed.

The Supreme Court of Oregon affirmed the decision, holding that the loyalty oath statute was unconstitutionally vague and contravened the First and Fourteenth Amendments to the Constitution of the United States, in accord with Baggett v. Bullitt, 377 U.S. 360 (1964), wherein a similar Washington statute was declared unconstitutional by the Supreme Court of the United States.

Texas

Gilmore v. James
274 F. Supp. 75
United States District Court, N.D. Texas,
Dallas Division, August 30, 1967.
Judgment affirmed, Supreme Court of the United
States, January 15, 1968, 88 S. Ct. 695.

This action challenged the constitutionality of a Texas nonsubversive loyalty oath statute and sought to enjoin its enforcement. The statute (Article 6252-7) provided that no state funds may be paid as wages to any person who has not executed an oath attesting that he is not and never has been a member of the Communist Party; that he is not and during the past five years has not been a member of any organization on the U.S. Attorney General's list, or a member of any organization registered under the 1950 Federal Internal Security Act; or if the individual was a member of any such organization, that he did not have knowledge of the proscribed purposes of the organization at the time he joined or while he was a member. Subscribing to the oath was a prerequisite to employment.

Plaintiffs were a junior-college instructor, who was dismissed on refusing to sign the oath; two teachers at the University of Texas who had signed the oath on initial employment but attacked the statute on the ground that as a consequence of signing the oath, unconstitutional restrictions on their rights of freedom of speech resulted; a teacher who was offered employment at the University of Texas, who claimed that the oath requirement as a condition of his employment threatened his constitutional rights of freedom of speech and association; and two students one of whom sought part-time employment at the university library and was a member of proscribed organization.

After disposing of issues as to which of the plaintiffs had standing to challenge the statute, the three-judge district court decided the question of whether disqualification from state employment solely on the grounds of present or past membership in subversive organizations is compatible with First Amendment liberties guaranteed against state infringement by the Fourteenth Amendment.

The federal district court held on authority of recent Supreme Court decisions, Elfbrandt v. Russell, 86 S. Ct. 1238 (1966) (see Teacher's Day in Court: Review of 1966, p. 38) and Keyishian v. Board of Regents, 87 S. Ct. 675 (see p. 46 of this report) that the Texas loyalty oath statute was unconstitutional. The statute was found to suffer from impermissible overbreadth in that it applied to membership in proscribed organizations without specific intent to further the illegal aims of such organizations as well as to membership with specific intent. The opinion states:

> Oaths in support of the government are not abhorrent to the Constitution. Indeed, the Constitution provides one. The vice of the oath condemned here is that it equates membership or association with non-allegiance. A statute which automatically disqualifies applicants on the basis of membership alone ensnares the innocent with the guilty. While such membership furnishes a basis for further inquiry into the applicant's present or past activities, it does not in itself constitute a threat to the state. An individual is entitled to be judged by his own conduct, not that of his associates. To the extent that Article 6252-7 disqualifies passive or dissenting members of such organizations, it is too broadly drawn.

On appeal, the Supreme Court of the United States, per curiam, affirmed the judgment.

LIABILITY FOR PUPIL INJURY

Illinois

Kaske v. Board of Education for the School District of the Town of Cherry Valley, No. 112, Winnebago County
222 N.E. (2d) 921
Appellate Court of Illinois, Second District, Aurora, December 13, 1966; rehearing denied, February 7, 1967.

A student who was injured as a result of a fire during an experiment in a general science class brought an action against the school board and the teacher. The jury returned a verdict of not guilty, and the student appealed.

The appellate court affirmed the judgment, holding that the alleged negligence of the teacher with respect to the explosion and the resulting injury to the student who was standing by the table and was set afire, was for the jury to decide. (Note: Only abstract was published.)

Louisiana

Frank v. Orleans Parish School Board
195 So. (2d) 451
Court of Appeals of Louisiana, Fourth Circuit, February 13, 1967.

The mother of a junior high-school pupil sued the school board and a physical education teacher to recover damages for a fractured arm incurred by her son as a result of an alleged assault by the teacher. This accusation was denied, and it was asserted that the boy attempted to commit an unprovoked attack on the teacher.

The record showed that while the teacher was instructing the pupils in a basketball drill, he twice ordered the boy off the basketball court and onto the sidelines because of his nonconformity with instructions. Testimony on how the injury occurred was not reconcilable. According to the teacher, the boy returned to the basketball court without permission a third time, and was escorted off it again by the teacher; once on the sidelines, the boy attempted to strike the teacher, and when the teacher grasped him by the arm to restrain the boy, he resisted and in doing so fell to the floor and broke his arm. The boy insisted that the teacher, without provocation other than the boy's unauthorized presence on the court, menaced and chased him around the court, and on catching him, lifted and shook him against some folded bleachers and then let him go so suddenly that the boy fell to the floor fracturing his arm.

Judgment was rendered against the school board and the teacher. Both parties appealed.

On review of the record, the appellate court found that the evidence preponderated in favor of the pupil. The court was unconvinced that the teacher, who was 5 feet, 8 inches tall, and weighed 230 pounds, in good faith actually believed that his physical safety was endangered by a blow from the pupil about a foot shorter and weighing 101 pounds. The court upheld the conclusion of the trial court that the teacher's actions in lifting the pupil, shaking him in anger and dropping him, was clearly in excess of the physical force necessary either to protect himself or to discipline the pupil. The lack of judgment on the part of the teacher in injuring the pupil in the course of ostensibly disciplining him, subjected the teacher and the school board to liability for the injuries incurred.

The court refrained from making any judicial pronouncements as to whether it is actionable per se for a teacher to place hands on a pupil. The individual facts and environment of each case would disclose both the right and the reason for a teacher to use force and the degree of force, if any, which may be used.

New Jersey

Titus v. Lindberg
228 A. (2d) 65
Supreme Court of New Jersey, March 20, 1967.

A nine-year-old child sued the parents of another child, the principal, and the board of education for injuries suffered when struck by a paper clip shot from an elastic band by another child before the classrooms opened. The pupil-plaintiff was struck while riding his bicycle onto the school grounds en route to the bicycle parking rack. The evidence revealed that the school was a "pickup site" for three other schools with older pupils and that the boy who shot the paper clip was a 13-year-old pupil waiting for the transfer bus.

Although the first bell rang at 8:15 A.M. and the last bell rang at 8:30 A.M. the principal was aware that pupils began arriving at 8:00 to 8:30 A.M. The principal's supervision of the pupils extended to the point of milk delivery, and thence, a walking tour through or around the building to the transfer area.

The complaint charged that the paper clip was negligently shot; that the principal negligently failed to exercise supervision; and that the board of education had "actively and affirmatively failed to provide the necessary safeguards."

The trial court rendered judgment for the injured pupil after a jury trial, and the board and principal appealed.

On appeal the judgment was affirmed. The principal contended that he was entitled to have the case dismissed on the ground that there was insufficient evidence to enable the jury to find negligence on his part. The court disagreed, noting that the record disclosed the contrary: that the principal had announced no rules with respect to the congregation of the pupils and their conduct before entering the classrooms; that he had assigned no teachers or other personnel to assist him in supervising the pupils; and that he failed to take any measures in overseeing their presence and activities except at the point of the milk delivery and walking around or through the building.

The court held that the principal and the board should reasonably have anticipated the conduct which resulted in the injuries and to have guarded against it. In allocating the liability for damages to each defendant, the court declared that the board on behalf of itself and its agent, the school principal, should be liable for only one-half of the damages rather than each defendant being separately liable for one-third of the award.

New Mexico

Employers' Fire Insurance Company v. Welch
433 P. (2d) 79
Supreme Court of New Mexico, October 30, 1967.

In a personal injury suit against the Hobbs Municipal School District No. 16 and the two school employees, the father of the injured boy alleged the negligence of all defendants. Before the trial, the two school employees were dismissed as defendants, with the understanding that this dismissal in no way affected the school district's right to contribution and indemnity against them.

After paying the judgment against the school district in the personal injury suit, the insurer of the school district brought this action against the two school employees for indemnity and contribution.

The complaint alleged that the judgment in the first suit was obtained under the doctrine of respondeat superior because of the negligence of the school employees. The school employees denied the allegation, pointing to the court's instructions under which the jury could have returned a verdict on any one of three theories: respondeat superior, concurrent negligence, or the sole negligence of the school district. The employees argued that only the jurors in the prior case could know upon which of the three theories their verdict was based.

Summary judgment was granted in favor of the employees, and the insurance company appealed.

The appellate court reversed the judgment and remanded the case. It held that the fact that the jury's verdict may or may not have been based on the theory of respondeat superior did not preclude the insurance company from prosecuting its claim for indemnity against the school employees.

The school employees also argued that the statute permitting suits against an insured school district acts as a waiver of governmental immunity to the extent of the insurance. They claimed that since the employee had no liability to the school district prior to the statute, though he could be held liable for personal negligence, the insurance contract introduces an additional liability on them. The insurance company, on the other hand, maintained that there was nothing in the statute to indicate an intention to deprive the school district of its right to seek an indemnity.

The court agreed with the position of the insurance company. The court said that if the suit had been brought against the school employees and they had been found negligent in their individual capacities, they would have had to respond in damages. The statute did not change this liability, and, therefore, the school employees cannot complain of an additional burden being placed on them when "the net effect is simply to say that they must respond for their individual negligent act, if any." The change was one of form, affecting no substantive rights.

Pennsylvania

Esposito v. Emery
266 F. Supp. 219
United States District Court, Pennsylvania, April 6, 1967.

(See Teacher's Day in Court: Review of 1966, p. 42.)

A seven-year-old boy was injured when a bank of four lockers fell on him as he attempted to open one of them. This suit charged the principal and head custodian of the school with negligence for failure to inspect the lockers and to correct the alleged defective condition which a reasonable inspection would have disclosed and, alternatively, with the failure to correct or to warn of an obvious danger. The defendants denied any duty to inspect the lockers and denied that a condition of obvious danger existed. Evidence revealed that while some lockers of the type involved were fastened to either the wall or the floor, they were designed and manufactured as free-standing lockers.

In deciding for the defendants on both points, the court held that the evidence revealed the supervising principal and supervisor of maintenance of the school district to be responsible for the maintenance and safety of school property and not the defendants, principal and head custodian of the school, since the supervising principal "did not delegate the inspection function to the school principal or custodian, nor did he seek advice or information from them." The court further observed that since the lockers were designed to be free-standing, the evidence did not support a finding that an obvious condition of danger existed.

Wisconsin

Cirillo v. City of Milwaukee
150 N.W. (2d) 460
Supreme Court of Wisconsin, May 9, 1967.

A 14-year-old pupil was injured in a rough "keep away" game in the school gymnasium when he was pushed into another pupil and fell on the floor. The roughhouse game was played while the teacher was out of the room 25 minutes. He had left a group of about 50 adolescent boys unsupervised during that time.

The pupil brought action to recover damages against the teacher and the city. His mother also sued to recover derivative damages. It was claimed that the defendants were negligent in failing to provide rules to guide the class, in attempting to teach an excessive number of pupils, and in the teacher's absenting himself and exposing the pupil-plaintiff to an unreasonable risk of harm by leaving the class of almost 50 unsupervised. The defendants denied negligence, and alleged contributory negligence on the part of the pupil in knowingly participating in a dangerous game and in failing to follow his teacher's instructions not to engage in horseplay.

The trial court granted the defendants summary judgment. The issues on appeal were whether the trial court was correct in these respects: (a) in finding as a matter of law that the teacher breached no duty to the pupil; (b) in holding, even if there was a jury question of the teacher's negligence (which did not get to the jury) that the pupil's negligence as a matter of law was at least 50 percent of the negligence involved; (c) in concluding that as a matter of law, liability should not be imposed on defendants under the circumstances of the case, for this would impose an undue burden on the school system and taxpayers, making them absolute insurers of students' safety.

The court held that the trial court erred on all three issues, and that summary judgment should not have been rendered in this case. As to negligence, the court stated the rule to be that the harm must reasonably be foreseen as probable by a person of ordinary prudence under the circumstances, if conduct resulting in such harm is to constitute negligence, but it is not necessary that the actual harm that resulted from the conduct be foreseen. In this instance, if the teacher could have foreseen the harm to some students in the class arising from rowdyism as a result of his absence, it is immaterial that the harm actually resulting was not that foreseen by the teacher. Nor as a matter of law, was the rowdyism of the participants in the game a superseding cause of the pupil's injury. If the teacher's absence is negligence, and this question is one for the jury to decide, the fact that the pupil's conduct or others in the game was also a substantial factor, does not excuse the teacher. A jury could find, the court said, that the teacher acted unreasonably in leaving his class unsupervised for a period of 25 minutes, particularly in view of testimony that the pupils were watching for the teacher and if he had looked in on the class, the rough game would have been stopped.

The court held further that under the comparative negligence statute, except in rare cases, it is a jury function and not that of a court to decide the apportionment of negligence. In this case, the court concluded, the question of the pupil's negligence was for the jury.

In rejecting defendants' contention that to permit recovery under the circumstances of this case would make them the insurer of the safety of Milwaukee school children, the court said that while it has recognized that a teacher is neither immune from liability nor is he an insurer of his students' safety, he is liable for injuries resulting from his failure to exercise reasonable care.

RETIREMENT

California

Hudson v. Posey
62 Cal. Rptr. 803
Court of Appeal of California, First District,
Division 3, October 16, 1967.

The divorced first wife of a deceased school employee petitioned the court for an order to compel the state employees' retirement system to pay her the death benefits due from the retirement fund. The second wife filed a cross-complaint, also claiming the benefit. The money was deposited in court by the retirement system for disposition.

The question before the court was whether the language in the will of the deceased employee effected a change in beneficiary. At the time he joined the retirement system, the school employee filed a written designation naming his first wife as beneficiary, which designation he never changed after his divorce unless the language in his will constituted such a change. The deceased employee continued to support his first wife and minor child after the divorce and his remarriage. There was testimony that he had promised his school retirement benefits to each of the women. Two years after his second marriage and 20 months after making his will, he wrote his first wife that he would take care of her financially as best he could while alive, and would leave his insurance and retirement to her. There was testimony, too, that the employee had told three teachers that when his expected baby of the second marriage arrived, he would designate the baby as beneficiary of the retirement fund. In the will the employee stated he had made certain dispositions to his first wife and to a minor child of his first marriage, and bequeathed all the remainder of his property to his second wife. There was no reference in the will to the retirement benefits.

Applying the law that to effect a change of beneficiary of a retirement fund there must be a clear manifestation in writing of the intent of the member to make such a change, the court held that in this case there was nothing in the terms of the will that could constitute the required clear and convincing proof of nomination of a different beneficiary. Despite the deceased employee's statements of intention to effect a change in beneficiary in behalf of his second wife and unborn child, made long after the execution of the will, he did nothing to effect such a change in beneficiary. Therefore, the court affirmed the judgment that the first wife was entitled to the death benefits from the retirement system.

Georgia

Purdie v. Jarrett
152 S.E. (2d) 749
Supreme Court of Georgia,
December 5, 1966.

A retired teacher sued the school pension board of Fulton County, to require that her accumulated unused sick leave paid to her at the time she retired be included in the computation of her pension. This inclusion would have increased her monthly pension from $406.54 to $421.47.

The retirement statute was amended in 1962 to provide that the pension be determined on the basis of monthly earnings, defined as "the average of the five years' salary during employment." The pension board contended that the unused sick pay should not be included in the computation, for it was neither "earnings" since it is not paid when service are rendered, nor is it "monthly" since it is paid only once, at time of retirement. This contention was rejected as being without merit.

In reaching its decision, the court considered two rules of the pension board. One rule provided that all compensation, including any bonus paid for services rendered be taken into account when arriving at average monthly salary for retirement purposes. The other rule provided that payment of one-half of a teacher's accumulated unused sick leave will be made at time of retirement.

In the opinion of the court, the unused sick leave clearly was compensation for services rendered the board of education because the teacher was not absent for illness. By not taking sick leave, the teacher had increased her value to the board of education and the payment to compensate her was merely a part of the total salary or compensation for the period of her employment. Therefore, the accumulated unused sick leave was properly includable as salary in computing the amount of pension due the teacher and she was entitled to the higher monthly pension as well as to be reimbursed for the months she was paid the lower amount.

Moreover, the teacher was entitled to monthly pension payments from the date of her retirement in June 1964, even though she received salary payments during July and August 1964. The court held that the summer salary payments were for services rendered prior to retirement equated over 12 months under her 10-month contract; these payments did not fall within the pension board rule that no pension shall be paid for any period of time during which salary for services performed has been paid, since this rule refers to a period of time when services are rendered or expected to be rendered.

New Jersey

Bortel v. Board of Education of the Township of Cherry Hill
230 A. (2d) 897
Superior Court of New Jersey, Chancery Division, May 31, 1967.

Two of the three plaintiffs in this case for a declaratory judgment were retired teachers in Philadelphia prior to moving to New Jersey and accepting teaching positions with the defendant, the board of education of Cherry Hill Township.

These retired teachers were entitled to and were receiving pensions from the Pennsylvania Teachers Retirement Annuity Fund while they taught in New Jersey. Their present New Jersey employer notified the teachers of the provisions of Section 43:3-1 of the New Jersey statutes which requires that all nonelected public employees who are entitled to a pension from any state, county, municipality, or school district must make an election between receiving the pension or the salary allotted to their employment. Only one, the pension or the salary, may be received for the duration of the employment.

The plaintiffs alleged that the statute is a denial of equal protection of the law in that its classification is arbitrary, discriminatory, and without reasonable basis. They also argued that the statute is an unconstitutional denial of property without due process, in violation of the Fourteenth Amendment and a related state constitutional provision.

The court held the statute unconstitutional in its application to persons receiving pension payments for prior public service in states which consider that such pension system creates contractual or vested rights. In determining the issue of whether New Jersey could condition public employment on the suspension of a constitutionally protected right, the court said, "Any restrictive conditions on public employment which affect, either directly or indirectly, the constitutionally protected right of every person to his property must have a basis in reason and serve a valid public interest."

The purpose of the statute was to put out-of-state pensioners and New Jersey pensioners in an equal position since an earlier statute already denied New Jersey state pensioners the taking of a state pension and a salary in another public job in New Jersey at the same time. The court ruled, "This is not such a reasonable basis as will sustain an infringement on a constitutionally protected right" such as the vested right of the retired teachers under Pennsylvania law.

New York

Madison vs. Gross
279 N.Y.S. (2d) 789
Supreme Court of New York, Appellate Division, First Department, May 18, 1967.

A teacher sought review of a direction by the superintendent of schools that she take a leave of absence because she was "unfit for duty on medical grounds." The lower court rendered judgment in her favor and appeal was taken.

The judgment was reversed on appeal on the ground that the direction to take a leave of absence was not a direction for retirement, and therefore, the teacher was not entitled to a hearing.

Wulff v. Teachers' Retirement Board of City of New York
279 N.Y.S. (2d) 374
Supreme Court of New York, Appellate Division, First Department, April 27, 1967.

(See Teacher's Day in Court: Review of 1966, p. 47.)

A teacher voluntarily chose to leave her employment in 1943 for a career of more than 20 years in the Navy, where she remained until she obtained a Navy disability retirement pension. Thereafter, she was reinstated as a teacher. She then sought an order requiring the City of New York to make contributions on her behalf to the teachers' retirement system and directing the teachers' retirement board to retire her on full disability pension with full pension credit for the entire period of her military service. The lower court decided that she was entitled to retire for disability from her teaching position and directed the board to pay her a retirement allowance.

The decision was reversed on appeal. The court held that the provision in the Military Law upon which the claim was made "was manifestly intended to apply to civil service employees whose purpose was to leave their civil service employment temporarily, in response to national need or in order to comply with the draft laws, but who intended to return to their civil service careers upon release from their military duties." The court ruled that the provision was not applicable to the teacher in this instance who had voluntarily chosen to make a permanent career of her military service, to the exclusion of her board of education employment, and that she was not entitled further pension from the teachers' retirement system. "A statute cannot be tortured so as to achieve a result which is preposterous...nor should it be so construed as to work a public mischief."

North Carolina

Harrill v. Teachers' and State Employees' Retirement System;
Bird v. Teachers' and State Employees' Retirement System
156 S.E. (2d) 702
Supreme Court of North Carolina,
September 20, 1967.

These two actions, consolidated for trial, were brought by two retired teachers of a state-supported college to recover their monthly retirement allowances which the retirement system withheld since December 1966, and for declaratory relief. The retirement system cross-claimed for recovery of retirement allowances previously paid.

The retirement board had passed a resolution in Ocotber 1965, effective January 1, 1966, providing that if a retired teacher were reemployed by a state college or agency in part-time employment, his retirement allowance would be suspended for the balance of the calendar year after earnings in such employment equalled $1,500.

One teacher had retired in 1957, the other in 1966. Each had performed "emergency part-time, temporary" teaching in the college from which he retired, for which he was paid on the basis of a fee paid for each course taught. These services were performed by one retired teacher during the years 1963-1966, and by the other during 1966. The earnings in each calendar year were over $1,500. The college made no retirement contributions on these earnings, nor did the teachers receive retirement credit or increased retirement benefits for these services.

The lower court ruled in favor of the retired teachers.

On appeal by the retirement board the question raised was what effect, if any, the retirement board resolution had on the teachers' rights with reference to their accrued retirement allowances for 1966. Pertinent was a 1949 amendment to the retirement law which authorized the retirement board to establish or promulgate rules and regulations governing the re-employment of retired teachers and employees.

The court held that the general language of the statutory provision did not confer on the retirement board expressly or by implication any authority to adopt the October 1965 resolution. Consequently, the teachers' acceptance of part-time, emergency, temporary teaching positions did not suspend or otherwise affect their accrued retirement allowances.

MISCELLANEOUS

Arkansas

Davis v. Board of Trustees of Arkansas A & M College
270 F. Supp. 528
United States District Court, E. D. Arkansas, Pine Bluff Division, September 1, 1967.

The teacher was employed as a member of the faculty of Arkansas A & M College under a written contract for the period, August 3, 1964, to May 31, 1966. After publicly criticizing certain actions in the treatment of prisoners in the state penitentiary, the teacher was called to the office of the college president for a warning against further public statements critical of the treatment of prisoners. Subsequent publicity involving the teacher resulted in his dismissal as a faculty member by the board of trustees before his contract expired.

The teacher brought this action for damages under civil rights laws and for injunctive relief. The university sought dismissal of the action on grounds of state immunity; failure to state a claim upon which relief could be granted; and that the complaint was based on a breach of contract, but the teacher was seeking damages in tort.

The issue raised was whether or not the necessary elements were present to establish a claim for damages under civil rights laws. The court held that the necessary elements were present for an action to recover damages and that a full hearing should be had since the conduct complained of was engaged in by the university under color of state law, and the conduct subjected the teacher to a deprivation of rights, privileges, or immunities secured by the federal Constitution. Motion to dismiss the complaint was denied.

Special School District of Fort Smith v. Lynch
413 S. W. (2d) 880
Supreme Court of Arkansas, April 24, 1967.

(See page 17. Case involves contract rights of a teacher seeking to return to employment after a leave of absence for health reasons.)

State of Arkansas v. Epperson
416 S. W. (2d) 322
Supreme Court of Arkansas, June 5, 1967; rehearing denied July 26, 1967.
Probable jurisdiction noted, Supreme Court of the United States, March 4, 1968, 88 S. Ct. 1024.

A teacher challenged the constitutionality of statutes pertaining to the teaching of evolution. The lower court held the statutes to be unconstitutional. On appeal by the state, the decision was reversed by the Arkansas Supreme Court. On the issue of constitutionality, the court held that the statutes are a valid exercise of the state's power to specify the curriculum in the public schools. The court stated that it was expressing no opinion on the question whether the act prohibits any explanation of the theory of evolution or merely prohibits teaching that the theory is true, since the answer was not necessary to the decision and the question was not raised.

The Supreme Court of the United States agreed to hear an appeal filed by the teacher.

California

Adelt v. Richmond School District
58 Cal. Rptr. 151
Court of Appeal of California, First District, Division 2, April 17, 1967.

(See page 23. Case involves right of reinstatement to former position upon return of a tenure teacher from sabbatical leave.)

American Federation of Teachers v. Oakland Unified School District
59 Cal. Rptr. 85
Court of Appeal of California, First District, Division 2, May 17, 1967.

A tenure teacher with 10 years of service in the school system, five of them in the same high school, was advised by the principal by telephone on the Monday after the close of the 1963-64 school year that he was being transferred to another school. In answer to the teacher's desire not to be transferred, he received a letter from the school superintendent dated June 26, 1964, that the transfer appeared to be consistent in the best interests of the school district. On the same date, the school principal wrote the teacher that the reason for the transfer was the consolidation of his teaching position; but at the same time the principal went into some detail on matters of concern and disagreement with the teacher that occurred in the past, offering them as constructive suggestions for assistance to the teacher in his new assignment.

The transfer in this instance did not follow the school-board transfer procedures which required, in the case of a principal-initiated transfer, that the principal arrange a conference with the teacher to discuss reasons for considering the transfer, and at its conclusion submit a written request to the coordinator with a copy to the teacher, listing his reasons why a transfer appears desirable, and requiring the coordinator to arrange an interview with the teacher to discuss all known vacancies and to consider possible assignments.

The court action was instituted to set aside the transfer and to reassign the teacher to his former position at the start of the next school year, 1965-66. The trial court granted the request because in its judgment the transfer was not made in compliance with the school-board transfer rules. The court stated that among the purposes of adopting rules governing transfer of personnel is the obvious one of improving morale, and consequently the performance of teachers, by establishing fair procedures which minimize the risk of arbitrary and prejudiced decisions or decisions based on incomplete facts or inaccuracies or misunderstanding.

On appeal, the school authorities argued that the transfer rules set out above did not apply to a consolidation transfer resulting from a drop in enrollment or curriculum change, since this type was not a transfer initiated by a principal. The appellate court disagreed with this argument, saying that once a principal is directed by his superiors to consolidate, the principal is the one who determines which of his teachers will be affected. The court stated it was clear from the transfer provisions that before a teacher was transferred on any grounds, he was entitled to the benefits of the steps of pre-transfer discussion among the teacher, the principal, and the coordinator as to the reasons for the proposed transfer and the availibility of other assignments in the event the transfer is made. Any discussions after the transfer is made could hardly be classified as the type of discussion contemplated by the rules.

The court held that the risk of prejudice to the teacher as a result of noncompliance with the transfer rules was so great that the trial court was justified in setting aside the transfer.

Mississippi

State of Mississippi for Use of Cochran v. Eakin and Aetna Casualty and Insurance Company
203 So. (2d) 587
Supreme Court of Mississippi, October 2, 1967; suggestion of error overruled, November 20, 1967.

The trustees of the Western Line Consolidated School District brought suit in the name of the state against a school principal and his surety for an accounting and judgment for an alleged deficit of school funds or student activities funds. The trial court dismissed the action. This decision was upheld on appeal.

The court concluded that it was not established by a preponderance of the evidence that the principal failed to account for or that he misappropriated money coming into his hands belonging to the school or to the students. While the court could not "condone or approve the loose, irregular, inept, and slovenly manner" in which the principal kept his financial records, the court held there was no evidence to show that the principal was not authorized to purchase equipment, books, and other materials for the school, or to use the "activities" funds for school purposes; nor was there any evidence to show that any funds turned over to the principal were used for his personal benefit.

New York

McKernan v. Allen
280 N.Y.S. (2d) 805
Supreme Court of New York, Appellate Division, Third Department, June 15, 1967.

The district superintendent of schools of the First Supervisory District of Sullivan County which included only the Narrowsburg Central School brought a petition to have a school returned to his supervisory jurisdiction.

The superintendent refused the request of the school board to recommend two probationary teachers for tenure on the basis of his classroom observation that both teachers were not adequately qualified. As a result of his refusal, the public rose to support a demand that the teachers be granted tenure.

In his petition to the court, the superintendent alleged that he was called to confer with an associate and an assistant commissioner of education and was informed that because of the public pressure the school would be taken out of his district if he refused to grant tenure to the teachers; that when he continued to refuse, the school was removed from his jurisdiction and placed in an adjoining school district where its superintendent recommended tenure for the teachers without ever observing them teach; that this left the supervisory district with no schools to supervise and with only 24 students already attending schools in another district under contract.

The superintendent charged that the school was not removed from his jurisdiction for "educational interests," as defined by statute but was removed solely as a means of granting tenure to the two teachers involved.

In its motion to dismiss the petition, the commissioner of education and other defendants stated that it was the legislative purpose to phase out supervisory districts when the superintendent dies or retires; that the commissioner can relocate districts when he sees an educational interest to be served and that there was no limit on this authority; that the tenure dispute involved an educational interest since all other school authorities disagreed with the superintendent's evaluation of the teachers.

The trial court denied the commissioner's motion to dismiss the petition.

On appeal, the petition was held to state facts sufficient to constitute a cause of action, and the order of the trial court was affirmed. The court noted the commissioner's virtual concession that the action taken under the statute authorizing him to relocate districts when deemed to serve an educational interest was to insure the tenure of the two teachers. Upon a reading of the petition, the court declared, "we perceive serious questions concerning whether the commissioner utilized his powers...for an educational purpose."

Ohio

State ex rel. Platz v. Mucci
225 N. E. (2d) 238
Supreme Court of Ohio, April 5, 1967.

The teacher challenged the constitutionality of a provision in the Wickliffe City Charter which prohibited a member of the city council from holding other public office or public employment. The teacher was elected to but denied a seat on the city council. He contended that this provision created an unreasonable classification in violation of the equal protection clause of the Fourteenth Amendment in that it barred him, a teacher in a neighboring school district, from being a member of the city council.

The court upheld the validity of the charter provision on the ground that the classification had a reasonable basis. The fact that the charter provision was subsequently changed to prohibit only a public employee of the city from being a member of the council was of no help to the teacher, the court said, since he was not qualified to hold the office at the time he was to be seated.

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